LAND RENT REVENUE ADMINISTRATION IN PENINSULAR MALAYSIA: A SURVEY OF SOME SOCIO-LEGAL AND ADMINISTRATIVE ISSUES.

BY

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THESIS SUBMITTED TO
THE UNIVERSITY OF EDINBURGH
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
DECEMBER 1995.

بسم ٱلله ٱلرحمن ٱلرحيم

IN THE NAME OF ALLĀH
THE MOST BENEFICENT, THE MOST MERCIFUL

DECLARATION

I, the undersigned, hereby solemnly declare that this thesis is written by me and does not represent the work of any other person.

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(AHMAD SHAH MOHD NOOR)
DECEMBER 1995

It is absolutely necessary that anyone appointed to a position connected with taxes should be selected with care and examined as to his religious and social way of life, as it is requisite in the case of persons appointed to make decisions and judge.

It follows that he who is appointed by you should not oppress, despise or disregard the tax-payers. He should wear for them a coat of leniency mixed with firmness and a spirit of inquiry without injustice or extortion. Leniency is to be shown to the Muslim, sternness to the wicked, justice to the Ahl al-Dhimma, rectification of wrongs to the oppressed, severity to the oppressors, and indulgence to the people, disposing them thereby to loyalty and obedience.

The collection of taxes should be carried out as prescribed by law, without any innovations by the administrator, who should refrain from following his personal inclinations, his duty being to treat all taxpayers equally, so that those present and those absent, the noble and the common, may enjoy the same rights and treatment.

Qāḍī Abū Yūsuf, Yaʿqūb b. Ibrāhīm al-Anṣārī
to Caliph Hārūn al-Rashīd.
Kitāb al-Kharāj (tr. A. Ben Shemesh).

ACKNOWLEDGEMENTS

Praise be to Allāh the Most Merciful and the Most Compassionate who has given me the strength to embark on this research and witness its fruition.

The efforts which culminated in the writing of this thesis owe a great deal to a number of people. First and foremost among them is Dr. Michael V. McDonald through whose inspiring patience in guidance and encouragement I am profoundly grateful. From the depth of my heart I wish to record my utmost thanks for his keen interest, kind assistance and generous supervision. I also wish to record my deepest appreciation to Professor Emeritus Dr. William R. Roff for his genuine endeavour, unfailing support and useful criticisms.

I also wish to record my thanks to the Public Services Department for granting me their sponsorship of this study leave for which, I believe, dedication and commitment to service would be the best mode of my repayment. For the completion of this thesis, I wish to thank the respective authorities of the Public Record Office, London and the National Archives of Malaysia in Kuala Lumpur and their branches in Alor Setar, Kota Baru, Johor Baru and Kuala Trengganu. The same goes to my colleague, Mustapha, the librarian of the Ministry of Lands and Co-operative Development for his helpfulness. To the colourful grassroots characters in the districts, both within the land offices where I have previously served, and where observations of this study were conducted, I wish to tender my sincere admiration for their kind co-operation. I am also moved particularly by the ready assistance, untiring effort and meaningful companionship of Husen Kassim as co-traveller during part of my research period.

If this be one of the milestones in one's academic pursuit, then, in land survey parlance, I owe it to countless demarcators who had helped me all the way up, and of most of whom, vivid memories still remain. In acknowledging the toil of my teachers and the counsels of my colleagues, mere words would not suffice. For the seed of knowledge

they planted and for the wisdom of life they whispered, till death would I remember.

For their teachings of the finer points in life, I owed the greatest indebtedness of all to my beloved parents Latifah Hamzah and Muhammad Nur Muhammad Saleh, may Allāh be merciful upon them. It is in their absence that the warmth of love of Khadijah Muhammad Nur and Yusof Karto is more greatly felt. They are the mentors whose deep sense of responsibility and quick intervention during the early part of my childhood has helped steer the course of my life. To them, I must confess, *'pisang emas dibawa belayar...'* So it is with the other brothers and sisters, and their spouses. To Bah, Kak Amah, Kak Nor, Enjah, Kak Nah, Endon and Timah, I wish to record my utmost gratitude for their unblemish loving care, untiring sacrifices and spiritual support. In their absence, I wish to thank Kak Asiah and Kak Tim for the share of deep concern showered on me by their beloved husbands, my late brothers Abang Utih and Abang Ca. May Allāh be pleased with them. In retrospect though, for the demise of Latifah and Muhammad Nur, Allāh the Most Merciful and the Most Compassionate has substituted for them the boundless love and affection of Kamariah Alang Mat Nasir and Arshad Alang Abdul Hakim, my parents-in-law, whom I adore in filial piety and from whom I draw inspirational strengths.

Finally, throughout the pursuance of my study, I enjoyed the loving and loyal companionship of my wife Rahimi Arshad and our children ʿUmar Faruq, Luqman Hakim, Umm Salamah, Maryam Sofiyah, Ibrohim Hanif and Asiyah ʿAbidah. It is for her inspiration, dedication and inexhaustible support, at times in the midst of discomfort and ill-health, that I wish to dedicate this work to my wife. To ʿUmar I wish to present this for his inspiration, to Luqman I wish to thank for his confidence, to Salamah for her affection, to Maryam for her cheerfulness, and to Hanif and Asiyah for three years of their entertaining mischiefs. Last but never the least ever, the result of this effort is dedicated to my ever-loving late loyal companion, counsel and wife, Marshitah Arshad, may Allāh have mercy upon her, by whose death I have yet to recover from such a great loss.

ALlāhu aʿlam.

AHMAD SHAH MOHD NOOR

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ABSTRACT

Land, under the Federal Constitution of Malaysia, is a State matter. As such it is crucial for the survival of a State, both financially and politically. Given limited resources, land forms one of the State's most important assets and sources of revenue. From annual rents imposed on all alienated lands the State generates its largest share of land revenue and regulates the administration of rent collection through the provisions of the *National Land Code*. Politically, land also symbolises the sovereignty and inherent power of a State Authority within a Federal arrangement. But whether or not this in theory matches reality, is the concern of this study.

Just as it has been in the past, land will always be an important ingredient in a State's finances in the foreseeable future. Revenue from land rent has contributed a lot to the infra-structural development of the country. It is difficult to imagine a State relinquishing its hold over land matters unless there exists a more viable alternative. Evidence suggests that currently returns from land rent form a meagre percentage of a State's total revenue and therefore, are not commensurate with the strength of its jurisdiction in the constitution. To make matters worse, whilst the State's debt increases, rent arrears keep accumulating over the years.

Retrieving information from primary sources and documentary evidences, and extracting data from interviews and observations of selected Land Offices at work, this study attempts to examine the possible causes of rent defaults and recurring arrears in Peninsular Malaysia by focussing on some of the socio-legal and administrative aspects of the problem. Building from what is quite obviously a symbiotic relationship between the constitutional development of the country and the evolution of its land laws, in the first chapter, this study next examines the reception of modern land legislation against the backdrop of strong Malay indigenous land tenure practices. This is followed by the third chapter with an overview of the State Authority's jurisdiction over land matters, rent recovery procedure and incidents of rent defaults.

The main thrust of the study is focussed in the fourth chapter which exposes cross-sectional views of land officials and land proprietors on the socio-legal and administrative dimensions of land rent, thereby providing an evaluation of land administration in practice. The scenario is followed through in the final chapter which discusses the prospective future of land rent as State revenue and explores other possible alternatives. In the process, this study also examines the historical relevance of Islam in Malay customary land tenure and the reception of Westminster-type land legislations in the Malay Peninsular, as well as the significance of some of the contemporary issues of the rent and its future alternatives from Islamic viewpoints.

NOTES ON TRANSLITERATION

Despite there being not many, this study involves the spelling of Arabic and Malay words. This necessitates the devising of a general system of transliteration. For the pupose of this study only, uniformity of spelling and transliteration will be observed as follows:

1. **Arabic / Islamic Terms.**

In this case, a modified version of the Encyclopaedia of Islam's system of transliteration as used by the Department of Islamic and Middle Eastern Studies, University of Edinburgh is adopted, except that words ending in *tā' marbūtah* are spelt with 'h'. For examples:

Ummah and not Umma
maṣlaḥah and not maṣlaḥa

As for Arabic words, in general these have been quoted in an Arabic transliteration rather than the Malay version. For examples:

Kaᶜbah and not Kaabah
ᶜUlama' and not Ulamak

Exception, however, is made for Arabic loan words which are used in popular Malay, where despite their Arabic origin, the local usage is adopted. For example:

Adat rather than ᶜĀdat

2. **Malay Words.**

Since the standardisation of Malay spelling took place only a few decades ago, the new Malay spelling system is used for words found in recent and contemporary works.

Provided that they are general words, even old Malay spellings are changed to new ones. For examples:

Kampung and not kampong

Relung and not relong (if used as a general term - see the following)

But Old Malay spellings are retained for proper nouns or where they are found forming part of a legal document or a direct quotation in the original text. For examples:

Relong not relung (if used in original document)

Chopeng or chopong not copeng or copong

3. **Names of Malays and Local Muslims.**

Despite their Arabic origins, names of local Malay Muslims are spelt according to its local renderings. For examples:

Abdul Aziz and not ᶜAbdul ᶜAzīz

Kamaruddin and not Qamar al-Dīn

4. **Names of Middle Eastern Muslims.**

Names of non-Malay Muslim personalities are spelt with the proper Arabic diacritical marks. For examples:

Abū Yūsuf and not Abu Yusuf.

Yaḥyā and not Yahya.

LIST OF ABBREVIATIONS

The following is a list of abbreviations used in the thesis:

ANM	The National Archives of Malaysia. (For ease of reference, all National Archives files consulted in this study are prefixed '*ANM*' despite the absence of such prefix in the original).
BA	British Adviser.
CLM	Commissioner of Lands and Mines.
CO	Colonial Office.
DO	District Officer.
EXCO	State Executive Council.
FMS	Federated Malay States.
FMSLR	The Federated Malay States Law Reports. (See MLJ below).
FT/KL	The Federal Territory of Kuala Lumpur.
HCO	High Commissioner's Office.
JMBRAS	Journal of the Malayan / Malaysian Branch of the Royal Asiatic Society.
JSBRAS	Journal of the Straits Branch of the Royal Asiatic Society.
JSEAS	Journal of the South East Asian Studies.
LA	Land Administrator. (Prefix 'A' or 'D' is added for Assistant or Deputy, respectively).
LO	Land Office.
MB	*Menteri Besar* (Chief Minister).
MISC.	Miscellaneous. (Other references to the National Archives of Malaysia files appear in different codes such as *P/PTG* for *Pejabat Pengarah Tanah dan Galian* or the Office of the State Director of Lands and Mines; *P/TANI* for *Pejabat Pertanian* or Agriculture Department; *J/PU* for *Penasihat Undang-undang*, Johor or Legal Adviser, Johore, etc.).
MLJ	The Malayan Law Journal. [eg. (1981)2 MLJ 62 = Volume Two of the Malayan Law Journal, page 62. The year is 1981.)
RCI	Royal Commonwealth Institute.
SDLM	State Director of Lands and Mines.
SL	*Suratan Lisan* (Oral Documentation).
SP	*Surat-Surat Persendirian* (Personal Papers).
SUK	*Setiausaha Kerajaan* (State Secretary).
UFMS	Unfederated Malay States.

LIST OF APPEAL CASES.

East India Company *v.* David Brown, 1818.

Collector of Land Revenue, Tapah *v.* Chong Loke Chong & Govind Pershad, 1922.

Tham Hing Kwai *v.* The State of Negri Sembilan & Ors, 1931.

H.W. Reid *v.* Collector of Land Revenue, Batang Padang, 1932.

East Union (M) Sdn. Bhd. *v.* The Government of the State of Johore & the Government of Malaysia, 1980.

Pow Hing & Anor *v.* Registrar of Titles, Malacca, 1980.

United Malayan Banking Corporation Bhd. & Anor *v.* Pemungut Hasil Tanah, Kota Tinggi, 1984.

Oriental Bank Bhd. & Anor *v.* Pentadbir Tanah, Hulu Kelantan, 1982.

Malayan Banking Bhd. *v.* Pengarah Tanah dan Galian Negeri Perak and Pemungut Hasil Tanah, Larut Matang, 1990.

Koperasi Sri Rembau Bhd. & Ors. *v.* Pentadbir Tanah, Rembau, 1994.

GLOSSARY OF TERMS.

Alienate	- means to dispose of State land in perpetuity or for a term of years, under the *National Land Code* or under a previous land law (not being a law relating to mining), in consideration of the payment of rent.
Alienated Land	- means any land (including any parcel of a sub-divided building) in respect of which a registered title for the time being subsists, whether final or qualified, whether in perpetuity or for a term of years, and whether granted by the State Authority under this *National Land Code* or under any previous land law (but does not include mining land).
Cap Kurnia	- concessions of land in the form of a deed of Royal gift.
Cap Zuriat	- concessions of land given to members of the royalty and their heirs in perpetuity.
Chopeng or *chopong*	- Probably a local currency in use in early Penang and Kedah, in the early 1800's it is estimated to be equivalent to ten pice [per *orlong*] or 4 1/2 pence [per acre].[Ref. *Misc. 19*: 'Minute of the Landed Tenure of the Prince of Wales Island: 15 August, 1823, by W.E. Phillips']. It could probably also be a corruption of the Malay word ***kupang*** which though the actual currency is non-existant today, is still being conveniently referred to by the northeners of Peninsular Malaysia when they actually meant it as ten cents (roughly 2 1/2 pence).
Kerah	- means exertion or mobilisation, the word implies forced labour, conscription, mass compulsory free service or corvée.
Land Administrator	- means a District Land Administrator appointed under Section 12 of the *National Land Code* and may include an Assistant District Land Administrator
Orlong or Relong	- 30,976 sq. ft. or about 3/4 of an acre and consists of 484 sq. *jumba*s of 64 sq. ft. In linear measure a *relong* consists of 25 *jumba*s of eight sq. ft. each. [Ref. S.K. Das, *The Torrens System in Malaya*, Singapore: Malayan Law Publishers Ltd., 1963].
Rent	- includes (a) any annual sum payable to the State Authority by

	way of rent; (b) any other annual payment due to the State Authority which by any written law is to be collected as if it were rent or land revenue; and (c) any fees due to the State Authority in respect of arrears or rent by virtue of rules under section 14 of the *National Land Code*.
Socio-legal	- the implications of law on society.
State Land	- means all land in the State (including so much of the bed of any river, and of the foreshore and bed of the sea, as is within the territories of the State or the limits of territorial waters) other than: (a) alienated land; (b) reserved land; (c) mining land; and (d) any land which under the provisions of any law relating to forests.

LIST OF TABLES, CHARTS AND APPENDICES

(With the exception of the section on 'charts' the first figure denotes the chapter in which the tables or appendices are located or are relevant to).

1. TABLES.

2. CHARTS.

INTRODUCTION.

The *National Land Code, Act of 1965* empowers the State Authority, among other things, to collect land revenues. One of the sources of land revenues is the annual land rent, or the quit rent, as it is widely known. Every registered proprietor of land is liable to pay the quit rent, and under the *Code*, payment is due by 31st May[1] of each calendar year. If the quit rent, which forms the first charge on the land, is not paid before 1st June,[2] the affected land will be liable to recovery action by the State Authority, which might lead to its forfeiture. With forfeiture, all encumbrances of the land, including any outstanding rents, are expunged from the title while the land reverts to the status of a State land.

Even though quit rent forms an important source of state revenues, records show that states land administrations in Peninsular Malaysia have encountered numerous problems regarding its collection. Apart from the shortfall in current rent collection, arrears become a recurring phenomenon which keeps on accruing as bad debt on the State treasury. This phenomenon challenges the efficacy of land administration machinery. Is the phenomenon of rent arrears simply a case of land owners' ignorance of the law? Is it merely the reflection of inefficacy of land administration? Or do the provisions of the land law itself, in any way, compound the problem? This research seeks to explore some of the likely causes of these arrears and to observe how selected different State land administrations respond to the situation.

Background.

Matters under the Federal Constitution of Malaysia are divided into three distinct lists, namely, the Federal List, the State List and the Concurrent List. Land and other

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1 Except in the State of Kelantan, where the date is fixed at 30th of June.

2 1st July, in the case of the state of Kelantan.

matters related to the control and use of land are recognised as a State subject and are included under Item Two of the State List of the Ninth Schedule of the Constitution. Therefore, revenues from land are assigned to States (Item Two of Part Three of the Tenth Schedule). Constrained by limited sources of income, notwithstanding the total amount received, revenues from land form a significant contribution to the State coffers. Collection of land revenues is regulated through the *National Land Code* and the respective States' Land Rules. As land rent forms major proportion of the revenue, it is disturbing to note that its arrears remain high in all the states. Figures from 1982 to 1993 betray steady increases. At the end of 1982 the amount was RM92 millions, but ten years later, the amount had shot up to RM269 millions, thus depriving the states of their desperately needed cash-flows. This brings us to the question as to what has been, is being, or ought to be done, to circumvent the ascending graph of unrecovered rents.

Granted that arrrears do occur in other circumstances - from electricity and telephone bills to income taxations - the question to be addressed is, whether or not the states, bound by their limited financial resources, can afford to even postpone the receipt of such an income, let alone to be totally deprived of it? Unlike energy and power utilities which can be continuously generated, land is a scarce and depleting resource. Each time a parcel of land is disposed off and alienated, the State loses a significant portion of its property, and with it its effective control over it.

Ironically, unlike certain utilities, where services or suplies can be terminated or suspended at the will of the supplier the moment the consumer fails to fulfill his contractual obligation, the State Authority in whom all land is vested, is, on the contrary, not in any effective bargaining power to exert its right to be paid the quit rent. The only option available, unpopular and very tedious though, is for it to resort to legal redress culminating in the forfeiture of the defaulter's land. But as a former Land Administrator, the present researcher is well aware of the social, the legal and the administrative complications involved in such a recourse. It is therefore partly the intention of this research to survey some of the issues involved in the quit rent recovery processes.

The Problem Stated.

What really are the factors which have caused arrears in quit rent or have contributed to the recurrent phenomenon? How serious are the implications of the quit rent for the State's revenue? How do the State Authorities respond to the situation? Are there political or administrative constraints facing Land Administrators? Can there be other alternatives to the current system and procedures to improve collection of rent and recovery of its arrears? How is the whole range of issues of land rent to be viewed from the Islamic perpective?

Research Objectives.

The specific objectives of this research are:

(a) to identify some possible factors causing arrears in the payment of the annual land rent;

(b) to study the impact of land rent in terms of overall State revenues;

(c) to examine the provisions of the *National Land Code* and their implications for land rent collection and arrears recovery efforts;

(d) to explore the possibility of administrative or legal reforms to existing land revenue systems; and

(e) to view from the Islamic perspective the contemporary issues of land rent revenue administration in the context of Peninsular Malaysia; and

(f) to propose recommendations to rectify land rent problems.

In the process, this research would attempt:

(a) to study briefly the historical background of the evolution of land legislation and the development of land revenue systems in the Malay States during the British colonial period up to the implementation of the *National Land Code* from 1966;

(b) to examine aspects of Islamic perspectives on land revenue and the collection system, its relevance to pre-colonial Malay customary land laws and to current issues related to land rent; and

(c) to observe land rent-related scenarios in various states in Peninsular Malaysia, particularly Johore, Kelantan and the Federal Territory of Kuala

Lumpur, and their significance for the individual state's land rent revenues.

Scope and Limitations.

Since land rent is a subject capable of too general a scope for discussion, this research intends to limit its focus to the matter of land rent as a form of State-imposed tax on land proprietors. As a specific aspect of land taxation, this research will only pertain to areas of relationship between the State Authority and registered land owners. It is neither a broad nor a general study of other forms or definitions of rents, taxation or tenancies. In narrowing the subject, an attempt is made in this study to limit it to the context of the annual land rent as a source of State revenue, the mechanisms of its collection or recovery under the *National Land Code* and the problems accruing from it. Despite intending to propose recommendations for consideration by the relevant authorities on the subject, it is beyond this research to deal with wider perspectives of land or agrarian reforms.

Other than historical documents gathered from primary sources of the National Archives of Malaysia and the Public Record Office in London, data from selected district land offices, from offices of State Directors of Lands and Mines, and from the office of the Director-General of Lands and Mines of the Ministry of Lands and Co-operative Development have been obtained to facilitate the present research.[3] Apart from the Kuala Lumpur land office, two district land offices each were chosen from the states of Kelantan and Johore. The basis of selection of offices in these states for observation is explained below. Despite the observations and inferences drawn from them, this research is not a detailed analytical study of behaviour, a measurement of attitudes or an evaluation of

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3 Interviewees consisted of the Deputy Chief Minister of Kelantan; the Director-General of Lands and Mines; a State Treasurer; two State Directors of Lands and Mines; three State Deputy Directors of Lands and Mines; two State Assistant Directors of Lands and Mines; four Land Administrators; one System Analyst; one Computer Programmer; one Secretary of a District Council; one Executive Account Officer; one Land Inspector; three Senior Administrative Assistants; five Administrative Assistants; one Notice Server; two senior Bank officials; one Marketing Executive; two Company Secretaries; two retired senior civil servants; and twenty land owners.

performances.

Field Research.

Two major instances triggered the researcher's interest in the problem area. First is the researcher's own experience as Land Administrator[4] in the district of Rembau in Negeri Sembilan, from 1987 to 1991, and in the district of Larut Matang and Selama, Taiping, in Perak, from 1991 to mid-1992. Five years of being a *de facto* in-charge of the said land offices and having to grapple with the complexities of the 'rent arrears problem' left a compelling impression on the researcher. This had driven the researcher's deep interest in the need to give more focussed attention to the ailing state of the problems and to discover their possible underlying explanations. That soon developed into a positive obsession, further reinforced by the researcher's (then as Land Administrator) observations on the often mixed and confusing policies and practices adhered to by fellow Land Administrators, and procedural uncertainties experienced by them in the light of exercising their powers and performing their duties of collecting rent and recovering its arrears.[5]

In addition to library research, field work in the forms of participant observations and interviews was mainly conducted in three selected states. Though Johore, Kelantan and the Federal Territory of Kuala Lumpur formed the main focus of the present study, visits were also made to and information directly gathered from other states, with the

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4 As a profession defined under section five of the *National Land Code, Act 56 of 1965*.

5 It has to be stated at the outset, however, that despite being a 'respondent' in a Ministry of Lands and Co-operative Development study on 'land office revenue procedures', the researcher was completely unaware of the actual terms of reference, the findings and the final report of the study conducted in 1990. It appeared later to the researcher that the Rembau land office was one of twelve selected as sample districts in the study. The researcher, as the district then senior assistant Land Administrator, was only approached by a senior official from the Ministry for permission to examine Rembau's 'collection system'. Permission was granted on the assumption of the study being a mere on-the-spot-check exercise undertaken by the Ministry as part of its usual management auditing processes. By August 1994, no copy of the report of the study was made available to the Rembau land office. It came to the researcher's attention in the course of the researcher's updated library research at the Ministry in June-August, 1994.

exception of Selangor.[6] Data from other than the focussed states are also included to observe the differences and similarities of parallel trends developing alongside the three states. The focussed states were each selected for their own unique characteristics. Physically Johore lies at the southernmost part of the peninsular. It has its own state civil service whose early administration, together with the State's constitution and legal system, became the model for some states in the Unfederated Malay States. As the only state which practices total separation of the Land Office from the District Office in its administrative structure, it would be interesting to note whether or not as a consequence of it, Johore's land rent collection performance indicates any significant difference from the rest of the states. Kelantan, on the east coast, has since 1990 been the only state in the peninsular being governed by a political party in opposite to the ruling party of the Federal Government. So, what implications does this factor have for the atmosphere of State-Federal relations *vis-a-vis* the position of land rent as an important source of state revenue? Given the political scenario, theoretically Kelantan has to have every interest in ensuring the efficient management of every one of its limited resources, including that of land rent revenue. The practical efforts of its land administration machinery in the collection of land rent and the recovery of its arrears should, therefore, be under scrutiny.

Almost equidistant between Johore and Kelantan, is the Federal Territory of Kuala Lumpur. Like the other Federal Territory, of Labuan, the main uniqueness of the FT Kuala Lumpur lies in its being the only federally-administered 'state' in the Federation. Highly urbanised and centrally located in the peninsular, with a land administration machinery somewhat resembling the Johore system, totally rid of any district office functionaries and not having to be unduly pre-occupied with social ceremonies and community development projects which other District Officer-led land offices had to undertake together with the district office, how does the Kuala Lumpur land office fare in its collection and recovery efforts?

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[6] Actual field work was carried out for three months from June to August, 1994. Selangor was not avoided on purpose. Two scheduled visits had to be postponed and later cancelled due to the researcher's ill-health during part of the field work period. The researcher regretted having to miss the visit to Selangor.

Throughout the field work period, views were consulted and information was gathered from conversations with many experienced land administration personnel, some of whom are retired and others still serving.[7] Some of these free and frank expressions were not taped or documented in formal interviews but noted as additional background information inputs. While some officials, for reasons of their own, preferred to be anonymous, names of some others interviewed, especially those in the lower hierarchy, are deliberately camouflaged to safeguard the confidentiality of their true identities. For those officials whose real identities are too obvious to be concealed, some due to the seniority of their posts and others due to the specificity of their designations, any attempts at anonymity would prove futile. The unavoidable disclosure of these officials' real identities is not anticipated to cause undue disadvantage to themselves. Instead such disclosure is believed to further enhance the credibility of this research. Still, to avoid unnecessary disclosures outside the interest and purview of this study, pseudonyms, first names, or initials only were used for certain individuals and related parties. Finally, with the exception of the Kuala Lumpur land office, the other offices directly case-studied are hereby only designated as District A Johore, District B Johore, District A Kelantan and District B Kelantan.[8]

This research acknowledges the importance of opinions and views expressed by cross-sections of land office clienteles ranging from individual landowners to bodies corporate. Their views formed valuable external feedbacks in respect of the land office operations. Insights into the land office procedures and the public perceptions of them, it is hoped, would help offer explanations for the trends in rent collection and arrears recovery. Hopefully, they also help reflect the nature of land administration responses as

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7 Not listed among the interviewees, they included one former Legal Adviser in the Ministry of Lands and Co-operative Development; two Senior Assistant Directors in the same Ministry; three State Senior Assistant Directors of Lands and Mines; four Land Administrators; two Senior Assistant State Secretaries; one Senior Assistant District Officers; two Senior Administrative Assistants; and two Senior Settlement Officers.

8 The State Director of Lands and Mines of Kelantan and the State Deputy Directors of Johore and the Federal Territory Kuala Lumpur in particular were all made aware of and were agreeable to the interview arrangements including the sensibility of disclosure or non-disclosure of their identities and that of their officials. Their own readiness and their encouragement to their assistants to co-operate with the research without preconditions are deeply acknowledged and appreciated.

a whole. Apart from and in contrast to perceptions formed purely by land administration officials in their attempt at understanding the rent defaults and the defaulters, the defaulters' own explanations for their failure and, in turn, their perceptions of the issue in particular and of land administration as a whole are also highlighted in this study.

Throughout the duration of the researcher's observations, however, two things have never been easy as regards the rent payers. First, as the emphasis of the study is on arrears, only views obtained from among the rent defaulters themselves are considered valid. This has ruled out the views of other land proprietors who are non-defaulters. It also explains the timing of the interviews which had to be not earlier than 1 June of the year. From this date onwards every proprietor who comes to pay rent at the land offices anywhere, except in the state of Kelantan,[9] is for all intents and purposes a defaulter. But this makes the meeting of a defaulter who is prepared to be interviewed for the study a chance encounter. Short of screening out defaulters from among the tens of thousands of registered proprietors, the researcher, with the much acknowledged kind permission of the respective land administrators or their immediate assistants and the co-operation of their subordinates, the administrative assistants at the pay-in counters, had to randomly pick out and approach the defaulters individually. Secondly, a considerable time had to be set aside to the effort to explain in-situ to every potential interviewee the purpose of the research, to gain their confidence about the confidentiality of their identities and views, and to convince them of the utmost importance of their feedbacks. Even so, not every one approached readily consented to be interviewed. Despite the limited opportunity, as expected failures were many. A number of those approached politely refused involvement, many with expressions of suspicion which are quite understandable. Several who consented to be interviewed requested anonymity, including those who begged that their views be written down instead of tape-recorded.

Feedback was more difficult to obtain from among corporate bodies than from land proprietors. A number of private company officials expressed strong reservations or suspicions on the motive of the interview. A couple of them took strong exception to their

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9 1 July in the case of Kelantan.

inclusion in the list of defaulters. A number completely refrained from further conversation. Some others were as evasive as they were cynical. All sorts of excuses were offered, some as mere pretexts to turn down interviews. Officials of government agencies and public statutory bodies took refuge in the General Orders as the most convenient course of avoidance.[10] A handful who consented to the interviews did so either out of their personal convictions as to the importance of their feedbacks, out of their trust in the researcher as a fellow civil servant-land administrator, or out of the belief that the benefits of their interviews far outweighed any possible risks. As was the case with some individual landowners, some officials too insisted that only their views be recorded, whilst their identities remained undisclosed.

The above provided two main reasons why interviews are much preferred over questionnaire surveys in this study. First, despite the large numbers of land officials, only those directly involved in revenue matters of the land office are directly relevant for this study. The same can also be said as regards the choice of interviews over surveys, of land owners and parties with registered interest in land who, despite their large numbers, only a handful are anticipated to be prepared to be interviewed. Secondly, interviews are employed in the study for the purpose of gathering as detailed as possible explanations from various levels of land officials in respect of their work experience and their knowledge of the procedures applicable under the *National Land Code*. Of significant importance to the researcher, is the views of junior officials. If past experience were to go by, their views are the most difficult to be obtained. It seems that their sometimes frank but confidential opinion, can only be best obtained, in an unrestrained atmosphere and unrestricted by the limitations of a questionnaire. The same concerns landowners. The researcher is convinced that the best means of getting defaulters and other parties with registered interest in land to confide, as clients of the land office, on wide-ranging issues of land rent, of reasons for defaults and of general peceptions about land rent in particular and land office in general, is through the medium of interviews.

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10 Under the provisions of the Public Officers (Conduct and Discipline), Chapter 'D', General Orders 1980, a public service official's procedural guideline, only a certain category of senior officers are allowed to make statements about their departments, while others would need prior official clearance or approval from the top.

Research Significance.

The present study is significant in two respects. Firstly, it falls in line with debates affecting the Federal-State governmental relationship especially in respect of the management of matters within the State List. One recent case was the atmosphere of apprehension experienced by a number of State Governments over the once rumoured proposal by the Federal Government to 'take over' water supplies management from the purview of the State Governments by the purported setting up of a Federal Water Supplies Authority. The rumour arose out of the failure of the Malacca Water Authority in 1992 to undertake contingency plans to resume long interrupted supplies.[11] The issue only receded after further clarifications were made by Kuala Lumpur at higher levels of government. Together with other incidents involving illegal loggings of timber within States' forest reserves, which smacked of failure by the State Government to exercise control and enforce the law, the crisis sent a grim reminder of the possibilty, though presently quite remote, of Federal 'encroachments' into State matters if resources, such as land revenues, are inefficiently managed.

Secondly, for a long time during and after the British colonial administration, land administration as a career discipline had been a much neglected area. This is reflected in the ratio and percentage of manpower deployed at the district level administrations by the Public Services Department. A clearer shift in the right direction was only evident when in 1987 district establishments were reviewed and more senior officials, in terms of number and grades, were assigned the postings. This belated administrative intervention by the Federal Government Central Agencies[12] may partly explain why, for a long time, systems and work procedures in land offices are recognised as being antiquated and obsolete.

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11 The crisis took the State by surprise for it amounted to a virtually total drying up of catchment areas. Kuala Lumpur viewed the matter with seriousness and urgency, for the prolonged crisis and the delay in supply resumption had not only interrupted livelihood but also adversely affected industries and tourism, the latter being one of Malacca's major sources of revenues.

12 In particular the Federal Treasury, the Public Service Department, and the Modernisation of Administration and Manpower Planning Unit of the Prime Minister's Department.

There have been many studies and reports on the subject of this research. Most were officially sponsored or self-conducted governmental studies, the biases of which are quite self-explanatory. But this does not imply that they lack self-criticism. However the unique difference about this study is that it is undertaken by a serving civil servant with past experience in land administration,[13] analysing views not only from officials and but also from members of the public, and furthermore, not only the views of senior officials but also those of their subordinates, and not only feedback from major land proprietors but also from individual owners.

Review of Literature.

As a study on a specific area of the history of land revenue administration in Malaysia and its contemporary issues, the First Chapter consists of a brief run-down of the symbiotic relationship between the constitutional development of present day Malaysia since the founding of Penang in 1786 and landmarks in the evolution of its land laws. Writings on the general history of the period abound but those on land administration are very limited. Other than departmental papers and periodical reports deliberating on problems encountered by land officials and suggestions for rectifying them, there are not many texts to be found on land administration. The scarcity of materials on the subject is aptly testified to by the former Lord President of Malaysia, Tun Dr. Suffian Mohamed Hashim who, in his foreword to Judith E. Sihombing's *National Land Code: A Commentary,* almost fifteen years ago, remarked that 'during the last century since [the] Torrens [system] was imported, only three books have appeared on the subject'.

The learned Suffian's mention of 'only three' is indeed a representation of fact, not an exaggeration. The three referred to by him are J.R. Innes' *A Short Treatise on Registration of Title in the Malay States Land & Mining Laws from 1907 to 1913* published in 1913, S.K. Das' *Torrens System in Malaya* in 1963 and David S.Y. Wong's

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13 The only other study on land administration in Malaysia by a fellow administrator (in the Malaysian Administrative and Diplomatic Service) was a Ph.D. dissertation by Nik Mohd Zain bin Haji Nik Yusof entitled 'Land Tenure and Law Reforms in Peninsular Malaysia' which was submitted to the Univesity of Kent in 1989.

Tenure and Dealings in the Malay States some twelve years later. Innes' *Treatise* is worth consulting for it provides an informative introduction to the subject, especially for those who are not familiar with the then local Malayan situation. Since the duration between Innes' *Treatise* and Das' work displays a lapse of some some sixty years, following through updated events, the latter serves as a good introduction generally to the historical diversity of the Malayan land law. Unfortunately, although he was aware of efforts being made at formulating a uniform national land legislation for Malaysia, Das' writing, published just a couple of years prior to the introduction of the *National Land Code* in 1966, was mainly focussed on the *Code*'s immediate predecessor, the FMS *Land Code, 1926 (Cap. 138)*. In fact, four-fifths of his book is on the *Cap. 138*. Though outdated in terms of much of its legal application, reading Das' work is, to the researcher, still a must for all Land Administrators, particularly those who have just begun their profession, with land administration being the specialised area. The historical contents of the *Torrens System in Malaya* is still relevant to understanding the present situation.

Being the first post-*National Land Code* text, David S.Y. Wong's *Tenure and Dealings in the Malay States* briefly deliberates on early Malay legal digests (particularly the *Hukum Kanun Melaka*), their general principles on land tenure, and their implications for land problems encountered by the Dutch and the British during their early colonial days. As the title suggests, the book mainly tackles the subject of Malay Reservation lands and the effects related legislation had and is still having on dealings in and economic development of such lands.

Not mentioned among published texts, but one of the most significant materials available is one which came down from W.E. Phillips through his 'Minute on Landed Tenure of the Prince of Wales Island', dated 15 August 1823.[14] Phillips' 'Minute' is probably the single most valuable documental clue to the nature and problems of land tenure in early Penang. In it are descriptive and statistical evidences of land administration, their peculiarities to Penang, attempts by certain individuals at addressing them, and quite lengthy insights into issues of European land speculation on the island. To the 'Minute' can

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14 *ANM/MISC . 19*: 'Minute on the Landed Tenures of the Prince of Wales Island: 15 August,1823.

duly be added numerous reports and memoranda on matters concerning land administration, particularly those prepared by William Maxwell in the duration of his ten-year's tenure of offices in the Straits Settlements, Selangor and Perak in the 1880s and 1890s.

From 1977 to the present day there have been a number of additional works directly or indirectly touching on aspects of land administration. The subject of British colonial land policy came under close scrutiny by Lim Teck Ghee in 1977 in his *Peasants and Their Agricultural Economy in Colonial Malaya, 1874-1941*. Unlike previous writings, Lim threw light on the impact colonial land policy had on the economy and socio-cultural values of the peasants as the future of the Malay States was being shaped. The correlation of rice, mining and rubber to the Malay, Chinese and Indian ethnic communities, and the contribution of these commodities to the country's overall economy foretells the significance and potentials of land development.

The crucial importance of land and its bearing on the future development of the country is evident from the existence of two reports on the matter. The first was commissioned by the International Bank for Reconstruction and Development headed by Sir Louis Chick. The Chick Mission's *Report on the Economic Development of Malaya* in 1955 was somewhat duplicated, but further reinforced by another report commissioned by then Malayan Government two years later. Together with the latter *Report of Land Administration Commission*, officially published in 1958, the reports underlined the critical importance of land as a resource of national development; but they also exercised caution and strongly urged the Malayan authorities to pay heed to the deplorable condition of land administration in the country. This was followed about a decade later by Professor Milton Esman's report on *Land Administration: A Study on Some Critical Areas* carried out for the Prime Minister's Department which exposed details of factors contributing to arrears and delays in land office work.

In parallel with land development there has been more additional literature. Ahmad Nazri Abdullah traced the historical background of Malay Reservation lands and the dilemmas facing them in the midst of current market challenges. His *Melayu dan Tanah*

(1985) further re-examined the rationale of the *Malay Reservation Enactments* and their effectiveness in championing the cause of the Malays. Ahmad Nazri also takes to task Malay attitudes to land and the scenario of post-independence Malay Reserves.

Three years after M.B. Hooker who, in 1986, edited *Malaysian Legal Essays: A Collection of Essays in Honour of Professor Emeritus Datuk Ahmad Ibrahim*, Judith Sihombing and the Professor Emeritus himself edited *The Centenary of the Torrens System in Malaysia*. These are mainly historical recapitulations of aspects of land legislations from the days of the Straits Settlements, to Malaysia. Sihombing in particular deserves mention for her highly commendable work in 1981 on *National Land Code - A Commentary*, as alluded to earlier. Hers is a masterpiece of section by section legal commentary on the application of the *Code* in its contemporary context and a useful companion to legal practitioners and land administrators. Following her *Commentary* is another legal commentary by Teo Keang Sood and Khaw Lake Tee entitled *Land Law in Malaysia: Cases and Commentary*. Published in 1987, the commentary provides a different dimension to Sihombing's. In their work, Teo and Khaw elucidate legal provisions under the *Code* by reinforcing them with references to past cases and judgements. Since *Cases and Commentary* deals only with cases cited under the *Code*, the absence of cases and legal judgments for previous legislations prior to the *Code* left much to be desired.

In 1987, another book which viewed the Malaysian land law from a different perspective appeared. Mohd. Ridzuan Awang's *Konsep Undang-undang Tanah Islam - Pendekatan Perbandingan* presented a historical overview of the concepts of land law in Islam and its comparison with that of civil laws, examined their relevance to the Malaysian situation both in terms of Malay customs and the Constitution, and commented on the provisions of land disposal, property inheritance, and reservation (including problems related to Malay Reservations) under the *Code* and other related laws. An interesting approach to the study of both civil and Islamic land laws is presented in Salleh Haji Buang's *Malaysian Torrens System.* Published in 1989, it is a unique blend of *Cases and Commentary* and *Konsep Undang-undang Tanah Islam - Pendekatan Perbandingan.* But where the two works end, *Malaysian Torrens System* provides in its last chapter a

discussion on 'Prospects for Islamization' of the land law, which is in tandem with the official Islamization policy of the government.[15]

Principles of Malay customary land tenure, Islamic precepts on land proprietorship, and the impact of colonialism on the Malays in general is reviewed in Chapter Two which also traces and examines the Islamic resemblances in the local customary tenure. William Maxwell's 1884 treatise on 'The Law and Customs of the Malays With Reference to the Tenure of Land' presents a thorough exposition of Malay customary practices governing land tenure. With the exception of few disputable views, the century old writing remains one of the most comprehensive writings yet covering almost all aspects of Malay customary tenure. The writing interfaces well with cross-references to old Malay digests, major Islamic texts on the *kharāj*, and contemporary legal judgments of the day.

P.J. Begbie's *The Malayan Peninsular* and T.J. Newbold's *Political and Statistical Account of the British Settlement in the Straits of Malacca,* both written in the 1830s, also provided backdrops to certain aspects of early Malay customary practices and the colonial impact on them particularly those pertaining to the Naning and the Malacca land problems and their immediate aftermaths. Norton Kyshe's[16] documentation of cases heard and determined in the Supreme Court of the Straits Settlements added another source of information for the 1808-1884 period.

The extent of influence Islamic law has on Malay customary practices on land tenure can be verified against the expositions of the principles of taxation in Islam of Abū Yūsuf Yaᶜqūb bin Ibrāhîm al-Anṣārî, Abū Zakariyya, Yaḥyā bin Ādam bin Sulaymān al-Quraishi, and Abū al-Faraj Qudāma bin Jaᶜfar bin Qudāma bin al-Kātib in their respective works entitled *Kitāb al-Kharāj*, translated by A. Ben Shemesh as *Taxation in Islam*

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15 This is in line with the announcement of a policy of 'Islamization of the Administration' by the Government of Malaysia in 1983. A revision committee was also set up in the same year to look into 'Islamic' aspects of the *Code*.

16 Kyshe's (Acting Registrar to the Supreme Court of the Straits Settlements at Malacca) documentation is contained in *ANM/SS/Misc. X* in the National Archives of Malaysia.

(1958-1969). Other classical works consulted as supplementary to the three *Kitāb al-Kharāj* are *Kitāb al-Amwāl* of Abū Ūbayd ibn al-Qāsim bin Sallām, *Kitāb al-Aḥkām al-Ṣulṭāniyyah* of Abū al-Ḥasan ᶜAlī bin Muḥammad al-Māwardī and *Al-Aḥkām al-Ṣulṭāniyyah* of Abū Yaᶜlā Muḥammad bin al-Ḥusayn al-Farrā'. Ziaul Haque's *Landlord and Peasant in Early Islam* (1984) which investigates both the theoretical and the historical aspects of the origins and development of the classical theory of *muzāraᶜah* in the light of the interpretation and elaboration of mainly the first two century Mulism jurists up to al-Shāfiᶜī, provides another illuminating text of modern study on the subject. Also consulted are Yūsuf al-Qarḍāwī's transalted version of *Hukum Zakat*. So are Frede Løkkegaard's *Islamic Taxation in the Classic Period* (1978) and Baber Johansen's *The Islamic Law on Land Tax and Rent* (1988) works on the general precepts of Islamic law on taxation. These complement D.C. Dennett's and A.K.S. Lambton's earlier account in *Conversion and the Poll Tax in Early Islam* (1950) and *Landlord and Peasant in Persia* (1953) respectively.

Away from the Middle East, one of the most relevant writings of comparable similarity to the Malaysian context on the processes involved and the peculiarities observed in the adaptation and assimilation of Islamic traditions and British colonial administrative system and civil law, to local customary practices, is B.H. Baden-Powell's three-volume text on *Land Systems of British India,* written in 1892. Among recent writings on the Muslim Indian experience are Imtiaz Husain's *British Land Revenue Policy in North India: the Ceded and Conquered Provinces, 1801-33* (1967), Noman A. Siddiqi's *Land Revenue Administration under the Mughals, 1700-1750* (1970) and Thomas Metcalf's *Land, Landlord and the British Raj* (1979). In his 1994 edition with Donald Quataert of *An Economic and Social History of the Ottoman Empire, 1300-1914,* Halil İnalcik presents yet another perspective of how traditional Islamic principles of land tenure have been assimilated down the centuries, adapted and applied in the Ottoman Empire during its 600-year reign.

As far as the Malaysian context is concerned, an overview of State's jurisdiction over land matters as enshrined in the Federal Constitution of Malaysia, both in its theoretical aspects and its practical applications, is examined in Chapter Three of this

thesis. Apart from the Articles of the *Federal Constitution,* detailed reference is made to the provisions under the *National Land Code*, and, wherever relevant, these are reinforced by the provisions of the *Constitutions of the States of Malaysia* and their respective *State Land Rules*. Approaching from a broad perspective of the Constitutional powers vested to the States over land matters, discussion in the chapter narrows down to operational aspects of land administration under the *Code,* particularly on the specific subject of rent collection. Brief comparisons are made on the legal provisions for rent collection procedures between those that applied under previous legislations prior to the *Code*, and those under the *Code*.

To provide further insights into the technicalities involved in rent collection and arrears recovery efforts, selected cases from 1818 to 1994 are presented towards the end of the chapter to highlight possible legal entanglements arising out of government forfeiture of lands for the failure of the respective proprietors to settle their debt. The *East India Company v. David Brown*, in 1818, the earliest traceable case brought to the Court for non-payment of land rent, is cited together with pre-*National Land Code* sample cases of *Collector of Land Revenue, Tapah v. Chong Loke Chong & Govind Pershad* in 1922 under the *Land Enactment of 1911* and of *Tham Hing Kwai v. the State of Negri Sembilan & Others* of 1931 and *H.W. Reid v. Collector of Land Revenue, Batang Padang* a year later, both under the *Land Code of 1926* or *Cap. 138*. Also cited are a number of oft-cited cases since the coming into force of the *National Land Code*.

Unlike judgments handed down on cases under the *Land Enactment of 1911* and under *Cap. 138,* which are reported in law journals, cases of legal judgments under the *Code* are quite widely reported in other recent literature on land law.[17] To these are added cases, unreported before, of appeals under Section 133 (1) of the *Code* by individual proprietors to the State Authority for annulment of forfeiture of their lands. Some of these were appeals directly brought to the State Authority for its consideration, whereas some

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17 Including Sihombing's *National Land Code - A Commentary*, Kuala Lumpur: Malayan Law Journal, 1981; Teo and Khaw's *Land Law in Malaysia - Cases and Commentary*, Singapore: Butterworths, 1987; and Salleh Haji Buang's *Malaysian Torrens System*, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1989.

others were cases which had earlier been filed in Court but were later withdrawn, either at the instance of Land Administrators or of counsel for the purported forfeited proprietor, to be settled at the State Authority level instead. These appeal cases were obtained by the researcher from office files. They were only made possible with the consent and cooperation of the respective State Directors and Land Administrators. Their expositions in this study go to prove the cumbersome legal procedures involved in all collection and recovery proceedings.

As the central focus of this study, Chapter Four puts into perspective the position of land rent in its current context. Proceeding from the history of its introduction into the local scenario, rent as the *major revenue contributor from land* has been one of the most important sources of revenue for the States. Financially though, in the face of other sources of revenues, the degree of importance of rent has gradually decreased over the years relegating it, in the words of S.W. Jones (*Public Administratuion in Malaya)* (1953), to a 'substantial supplementary'. As examined by J.G. Butcher and Dick Howard in *The Rise and Fall of Revenue Farmings: Business Elites and the Emergence of the Modern State in Southeast Asia*, published in 1993, the same fate had also befallen tax-farming, once an important source of public finance. It is a fate determined by history. For as long as land matter remains a State jurisdiction, it follows that land rent will stay as an important revenue contributor. But it is the actual percentage of revenue generated from the rent that should be a serious cause for concern for the State Authorities, for it is argued that full utilization of the rent source is important not only because it helps ease the State's financial strains, but more so because it underlines the strength of the State Authorities to exercise their powers and to defend their right and interest over a larger area of 'land matters' for which they hold the constitutional jurisdiction.

Views of cross-sections of interviewees, and findings by the researcher from available documents and from selected observations, depict a general scenario of land offices at work. Other than those obtained direct from revenue unit files of some land offices, information and data, especially those in connection with States' revenues, debts and land rent figures, are also obtained from other published and unpublished, but reliable sources. Among the sources are the Tax Division of the Ministry of Finance, the *Auditor-*

General's Annual Reports for the respective states for the 1982-1991 period, the *Laporan Tahunan (Annual Report)* of State Directors of Lands and Mines for 1991-1993, the State Directors of Lands and Mines Conference Papers for 1981-1993, and reports of case studies carried out on land office's computerised land rent collection system by the Auditor-General's Department Training Branch. The problems encountered by land officials in their rent collection and recovery efforts reflect the general patterns which had been emerging in Malaysia's land administration and which, in the view of Robert Tilman (*Bureaucratic Transition in Malaya*) (1964), needed imagination and determination by the States to solve them. Gayl. D. Ness's *Bureaucracy and Rural Development in Malaysia - A Study of Complex Organization in Stimulating Economic Development in New States* (1967), R.S. Milne's *Government and Politics in Malaysia* (1967), Milton J. Esman's *Administration and Development in Malaysia* (1972), J.H. Beaglehole's, *The District: A Study in Decentralization in West Malaysia* (1976) and Mavis Puthucheary's *The Politics of Administration - the Malaysian Experience* (1978) all added realistic illustrations of the administration of a relatively young nation coming to terms with itself.

On the rationale for land rent in Malaysia, its contemporary significance, and its foreseeable impact on the future of States' constitutional jurisdiction over land matters, *vis-a-vis* the Federal-State financial and political relationship, specific issues are examined in the Fifth and final chapter of this study. Unlike the situation prior to independence where politicians are virtually absent from the administrative scene, post-independence saw the emergence of a parallel influence - that of the politicians and the administrators. In a sense, the issue of land rent manifests two levels of conflict within bearers of authority; one in the nature of the Federal-State relation, and the other in the relation between politicians and administrators, in striving for what is supposedly the best interest of the State. A number of suggestions are explored in the chapter and re-examined from the Islamic perspective, in the hope of securing the best future for States' revenue from land, and of ensuring the best possible administration of land for the public.

This study concludes with some general remarks on the state of the affairs of land administration as a specific career discipline over the years, and examines the prospects of its survival as a meaningful service to the State and the public, both from the viewpoint

of a professional Land Administrator and from the Islamic perspectives. The Islamic perspective taken in this study, it has to be qualified, is not from the standpoint of Islamicity as the religio-political status, or otherwise, of the present state of the federal Government of Malaysia or any of the constituent states. The Islamicity of a government is not the subject of this study. Islamic perspectives in this study refers to the assimilation of Islamic values in the administration as officially professed to be adopted by the Government of Malaysia since 1983. It is therefore the profound hope of this researcher that the present study will have fairly contributed to the field of knowledge and that land administration as a career discipline will not remain a much neglected area, as it is here contended to be.

CHAPTER ONE

CONSTITUTIONAL DEVELOPMENT OF MALAYSIA AND THE EVOLUTION OF ITS LAND LAWS.

Constitutional Development:

The Straits Settlements and the Protected Malay States.

The forerunner to the constitutional development of the Malay States is the unique position of Malacca with its well-structured administration and codified laws.[1] Founded in 1400, its rapid rise from a small fishing village to become a strategic port of call linking the East-West trade routes had conferred upon it a wide ranging influence as far east as China with which it forged diplomatic ties. Malacca's establishment as a Muslim kingdom[2] marked the demise of the political control and cultural dominance in the Malayan Archipelago of the Hindu-Buddhist kingdoms of Majapahit and Srivijaya.

However, Malacca's power and influence faded when it finally succumbed to the technically and militarily superior powers of the West beginning with the Portuguese in 1511.[3] The Portuguese who experienced over 130 years of uneasy rule in turn lost

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1 Muhammad Yusoff Hashim, *Kesultanan Melayu Melaka*, Kuala Lumpur, 1990, pp. 128-322. See also Kernial Singh Sidhu and Paul Wheatly, (eds.), *Melaka: The Transformation of A Malay Capital c. 1400-1980*, Vol. 1, Kuala Lumpur: Oxford University Press, 1983.

2 Moshe Yegar, in *Islam and Islamic Institutions in British Malaya*, Jerusalem: The Magnes Press,1979, regarded Malacca as a 'militant centre' for the diffusion of Islam in the area. The depths of Islam's influence over the religious, cultural and intellectual traditions of the Malays is explored by S.M.N. Al-Attas in *Islam Dalam Sejarah dan Kebudayaan Melayu*, Kuala Lumpur: Penerbit Universiti Kebangsaan Malaysia, 1972.

3 Their venture to Malacca was declared to be 'a crusade against the Mohammedan religion' [W. Makepeace, et. al., (gen.ed..), *One Hundred Years of Singapore*, Vol.1, London: 1921, p. 18] seeking to win 'souls for the Catholic faith' [R. Allen, *Malaysia: Prospect and Retrospect*, London, 1968, p. 20) and their rule was imbued with 'commercial and religious aggression' (Yegar, *op.cit.*, p.8] and 'hate against the Muslims' (B.W. Andaya and L. Y. Andaya,*A History of Malaysia*, London: 1986, p. 56). Citing writings of Barretto de Resende in 1638 who criticised their land policy which strongly discriminated against the "...Moors [whose] land was well cultivated," R.O. Winstedt (*JMBRAS*. Vol. XIII, Pt. 1. March 1935) p. 90, felt that the Portuguese could have neutralised the

Malacca to the Dutch in 1641. After a century and a half, political considerations and other circumstances back home[4] forced the Dutch to surrender Malacca to the British. Though they had temporarily reoccupied Malacca between 1818-1824, the Dutch finally transferred Malacca to the British in 1824 under the Anglo-Dutch Treaty.

Meanwhile, to the north of the Malay peninsula, Francis Light, an official of the English East India Company (after this the Company),[5] through some dubious means couched in legal trappings, acquired Penang island for the Company from the Sultan of Kedah in 1786 and renamed it The Prince of Wales Island. Fourteen years later, the Company obtained another cession involving part of an area off the said island, which it subsequently renamed The Province Wellesley.[6]

In another development, in 1819, Stamford Raffles, another Company official, disembarked on the island of Singapore and signed a treaty with the Sultan and Temenggong of Johore for a right of the Company to establish a 'factory'[7] on the island.

Malays and won over their friendship had their administrators "encouraged Malays to cultivate the hinterland [which they were instead deprived of]..."

4 Largely due to the VOC's (*Vereenigde Oostindische Compagnie* or the United East India Company) administrative and military overcommitments which, by then, were already beyond their means, as well as Holland's deep involvement in the Napoleonic War.

5 The East India Company which originated as The Governor and Company of Merchants Trading to the East Indies in 1833 was merged with a rival company, The English Company Trading to the East Indies and became The United Company of Merchants of England Trading to the East Indies. See B.H.Baden-Powell, *Land-Systems of British India*, Vol.1, London, 1892. (Reprint: Oxford: The Clarendon Press, 1972).

6 Andaya, *op.cit.*, p. 114; Makepeace, Brooke and Braddell, *op.cit.*, p. 15; Allen, *op.cit.*, pp. 25-27; Salleh Buang, *Malaysian Torrens System*, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1989) p. 2. For an account of the striking similarities between events surrounding the 'founding' of Penang, the justifications for occupying and applying English laws on 'newly found territories', and the 'colonization' of Western Australia in 1788, see Henry Reynolds, *The Law of the Land*, Victoria: Penguin Books, 1987, and Kenneth Maddock, *Your Land Is Our Land*, Victoria: Penguin Books, 1983. Albert Memmi, *The Colonizer and the Colonized*, London: Earthscan Publications, 1990), argued that "if they [the colonized] let themselves be colonized, it is precisely because they did not have the capacity to fight, either militarily or technically." (pp. 90-91).

7 Article 1 of the agreement signed between Raffles and Sultan Hussain Mahomed Shah determined the Company's boundaries "...as far as the range of cannon shot, all round from the factory." See T.J. Newbold, *Political and Statistical Account of the British Settlement in the Straits of Malacca*, Vol.

Five years later, the Company obtained cessional rights over the whole island, including its adjacent seas, straits, and islets, extending to ten (10) geographical miles from the coast.

Thus by 1824, the Company held possessions of Penang, Malacca and Singapore, collectively referred to as the Straits Settlements. When the Company was abolished in 1858, the Straits Settlements, initially administered as a presidency of the Government of Bengal in India, were transferred to the Imperial India Office. In 1867, the Straits Settlements became a Crown Colony under the direct jurisdiction of the Colonial Office in Singapore.[8]

The Straits Settlements' changed status and administrative transfer drew the British effectively closer to the Malay States. It subsequently led to a fundamental change in British foreign policy,[9] dragging it into direct intervention in the affairs of the Malay States. The Pangkor Engagement of 20 January, 1874, marked the most controversial episode of Anglo - Malay relations, the consequences of which virtually laid clear the path for further direct British intervention and control of the Malay States.[10] The despatch of

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1, London: 1839, Vol. 1, Appendix No. VIII, pp. 485-487. Requesting the right to establish a 'factory' seemed a standard ploy by the Company to disguise future expansion plans. See Baden-Powell, *op.cit.*, p. 31, on the creation and evolution of 'factories' into 'settlements' and 'presidencies' in India and the East Indies with the 'original factory' finally transformed into a 'Presidency town.'

8 In spite of genuine appeals from Chinese and British traders and merchants citing piracies, secret society activities and 'instabilities' in the Malay States as disrupting their businesses, threats of foreign interventions, especially from the Germans in the Philippines and the French and the Spanish in Indo-China, as well as potential commercial rivalry from Hong Kong, the transfer also betrayed clever manouvres by Colonial administrators who advocated a so-called 'forward policy.'

9 Khoo Kay Kim, in 'The Origins of British Administration in Malaya,' *JMBRAS*, Vol. 39, Pt. 1, No. 209, July 1966, pp. 52-91, holds the view that economic consideration far outweighed the German threat factor in the shift of British policy. In an alternative argument, J. De Vere Allen, dismissed the existence of "such a thing as a 'policy'...by the Colonial Office in London." See his 'The Colonial Office and the Malay States, 1867-73', *JMBRAS*, Vol. 36, Pt.1, No. 201, May, 1963, pp. 1-36.

10 The most significant Articles of the Pangkor Engagement were: Article VI - "that the Sultan receive and provide a suitable residence for a British Officer to be called Resident, who shall be accredited to his Court, and whose advice must be asked and acted upon on all questions other than those touching *Malay* Religion and Custom"; and Article V - "that all Revenues be collected and all appointments made in the name of the Sultan", to be read in conjunction with Article X - "that the collection and control of all Revenues and the general administration of the country be regulated

a Resident to Perak, and an Assistant Resident to Larut, in the same year of the Engagement, marked the formal introduction of the 'Residential System.'[11] British officers were then despatched to Selangor, Negri Sembilan and Pahang, all of which together with Perak came under the British protection, and, in 1896 became known as the Federated Malay States (the FMS).

In a separate move, under the terms of the Treaty of Bangkok of 1909, which it had entered into with the Kingdom of Siam, the British Government officially obtained from the Siamese all rights of suzerainty, protection, administration and control over the Malay States of Kelantan, Terengganu, Kedah, Perlis and the adjacent islands. The only Malay State which was excepted was Johore which, practically on its own accord, only agreed to accept a British General Adviser in 1914.[12] As a group, these five states became known as the Unfederated Malay States (the UFMS).

The Federation of Malaya, and Malaysia.

During the second World War, the nine Malay States, together with the Straits

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under the advice of the Residents", as cited in P. L. Burns, *The Journals of J.W.W. Birch : First British Resident To Perak 1874-1875*, Kuala Lumpur, 1976, in Appendix II, pp. 375-377. Arguing that the British had long intervened in other Malay States prior to the Engagement, Khoo Kay Kim, *op. cit.*, p. 52 regarded 20th January, 1874 not as the beginning of British intervention in the Malay States but more as the marking of the establishment of its administration.

11 The introduction of the system was marked by the assassination of the first British Resident to Perak, James Wheeler Woodford Birch on 2 November, 1975, only about a year after he had taken up the post.

12 Phillip Loh Fook Seng, *The Malay States 1877 - 1895: Political Change and Social Policy*, Kuala Lumpur, 1969, pp. 1-80, gives an interesting account of how the Maharajah of Johore, through his Pahang alliance, outwitted Governor Frederick Weld, thus delaying the acceptance of a British Resident in Pahang and avoiding Johore having to become a British Residency. When in 1885 the Maharajah secured Her Majesty's Government recognition of himself as the Sultan of Johore, it reaffirmed the State's independence and non-Residential status. See *CO 273/138*: Stanley to Weld, Private of 23 December 1885 enclosed in File No. 19683 entitled Proposed Agreement 10/11/1885, as also cited by Loh. But even before its former acceptance of a British Adviser on May 12, 1914, the Johore Sultan had already had British Advisers among whom was C.B. Buckley who was succeeded in 1910 by Douglas Campbell. See *ANM/SP12/105*. Roland Braddell (*The Legal Status of the Malay States*, Singapore: Malayan Publishing House Ltd., 1931), p. 24, described Johore then as 'a highly organized state.'

Settlements, came under Japanese occupation for three and a half years, from February, 1942. After the Japanese surrender, Britain regained control and administered through the British Military Administration (the BMA) from September, 1945 to March, 1946.[13] Interestingly, apart from military causes, British defeat at the hands of the Japanese army was also often attributed to Malaya's administrative fragmentation.[14] In hindsight, the short period under the BMA gave the British Government time to prepare and propose new constitutional arrangements for her protectorates. Barely six months after the announcement of a new plan for its formation, the premature Malayan Union was hastily inaugurated on 1 April, 1946,[15] in spite of strong opposition from local organisations, Malay leaders, and also a number of former colonial administrators.[16]

In view of strong Malay opposition, the Malayan Union was abandoned and other arrangements were made between the British government and Malay leaders and rulers. The British government abolished the Straits Settlements, and, on 1 February, 1948, declared the coming into being of a new Federation of Malaya, consisting of all the nine Malay States, Penang and Malacca.[17] Singapore remained a Crown Colony.

The Federation gained full independence from Great Britain on 31 August, 1957.

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13 As far as land was concerned, British policy during the war was to sustain the increase in rubber and tin outputs to help finance Allied war efforts. Under the Japanese not only were these outputs reduced, but people abandoned plantations and mines, and worse still, even local rice production fell by one-third. From another dimension, the Japanese occupation period saw a growing impetus for the rise of patriotism and strong clamourings for pan-Malayan nationalism. See William R. Roff, *The Origins of Malay Nationalism*, Kuala Lumpur: Penerbit Universiti Malaya, 1980.

14 Gullick, *op.cit.*, p. 83; Allen, *op.cit.*, p. 82.

15 The principal policy formulator in London was Edward Gent, then Assistant Permanent Under Secretary for the Colonies, and later, High Commissioner to the Federation of Malaya. See C. B. Simandjuntak, *Federalisme Tanah Melayu : 1945-1963*, Petaling Jaya: 1985, p. 43. With the exception of Singapore which was to remain a Crown Colony, the Malayan Union was supposedly to consist of the nine Malay States, Penang and Malacca.

16 Notable among them were Frank Swettenham, Lawrence Guillemard, Cecil Clementi, Graham Maxwell, Richard Winstedt (Andaya, *op. cit.*, p. 256), Gammans, and Rees-Williams (Simandjuntak, *op. cit.*, p. 48).

17 In the same year the new government proclaimed an Emergency in view of mounting Communist insurgency.

A couple of years later an idea for a new and enlarged federation incorporating the Federation of Malaya, British North Borneo (Sabah) and Sarawak received strong backing from the British government. On 9 July, 1963, the governments of the United Kingdom, together with the governments of the Federation of Malaya, North Borneo, Sarawak and Singapore signed the Malaysia Agreement giving birth to the Federation of Malaysia on 16 September, 1963.

No major constitutional changes took place except the separation of Singapore from the Federation in 1965 and the creation under an Act of Parliament a decade later of a new constituent, known as 'The Federal Territory of Kuala Lumpur.'[18] This was followed in 1984 by the creation of yet another such constituent known as 'The Federal Territory of Labuan.'[19] While Sabah and Sarawak together became known as East Malaysia, the former Federation of Malaya, or West Malaysia is commonly referred to as Peninsular Malaysia.

Land Legislations:[20]

The Straits Settlements from 1786 to 1886.

It was clear right from the beginning that upon founding Penang, Francis Light's

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18 Under the *Constitution (Amendment) (No. 2) Act 1973*, the 'Federal Territory of Kuala Lumpur' was established by its physical creation out of parts of the former territory of the State of Selangor. The territory enjoys the status of a constituent 'State' of the Federation and is directly administered by the Federal Government.

19 Established under the *Constitution (Amendment) (No. 2) Act 1984* and physically created out of the island of Labuan, formerly part of the territory of the State of Sabah.

20 David S. Y. Wong in his *Tenure and Land Dealings in the Malay States*, Singapore: 1977, p. 7, provides helpful explanations of legal nomenclatures. Under the Protected Malay States, resolutions passed by the respective State Councils were known as *Orders in Council*; after the formation of the Federated Malay States, legislation passed either by the Federal or by the State Councils were called *Enactments*; during the Malayan Union and pre-independence Federation of Malaya, while Federal legislation were called *Ordinances*, State legislation remained as *Enactments*; and, finally, after independence in 1957, legislation by the Federal Parliament came to be known as *Acts*, while that of the States were known as *Enactments*. He adds that prior to formal lawmaking by the State Councils, Malay Rulers in some States used to issue their own *Proclamations* relating to land matters, and, that even British Residents issued land regulations in the forms of official notices or '*rules*'.

preoccupation was merely to attract settlers to the island for it was claimed that at the time the island was virtually uninhabited.[21] There was hardly any land policy and revenue was never a serious consideration. While statistics showed that barely three years after its founding, Penang boasted a population of 10,000,[22] its land disposal practices were in total disarray. As Superintendent given full discretion to administer the island, other than issuing his Public Circular Declaration in 1788 pledging the 'faith' of the Government, and waiting for instructions from the Bengal Government to his initial proposals regarding local settlers and European land holdings, Light failed to set clear guidelines on land disposals.[23]

In defence of Light's indiscriminate issues of written grants and verbal permission to settlers to clear and occupy land, Phipps and Sihombing[24] faulted the Company for its failure to supply Light with the necessary instructions as well as its long delay in responding to the Superintendent's urgent requests. They concluded that in certain circumstances the instructions were ignored by Light due to their non-informative nature or their being rendered ineffective by events.

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21 Makepeace, et. al., *op.cit.*, p. 15. H. P. Clodd, an unofficial member of the former Federal Council of the F.M.S. in his *Malaya's First British Pioneer - The Life of Francis Light*,London: Luzac & Co., 1948, pp. 46-47, quoted from 'A Historical Memoir of Penang', an article by one J.C.Pasanal, published in the *Penang Gazette* dated 25th of May, 1922, who claimed that in 1795 a grant of 'Dato' Kramat' clearing was issued to a descendant of one Maharaja Setia "who cleared the [Dato' Kramat] ground ninety years earlier [1705]." Pasanal's assertion that there were 'some thousands [of] inhabitants' in Penang prior to Light's founding of the island contradicted popular versions that at the time Light discovered Penang there were only a few fishing families.

22 S. K. Das, *The Torrens System in Malaya*, Singapore: 1963, p. 51.

23 The early situation was best documented by W. E. Phillips, who for five months in 1801-1802 acted as Lieutnant Governor of Penang. In his 85 page report to the Board of Directors of the Company., Phillips stated, "On our first taking possession of the Island, Mr. Light was authorized by the Governor General to distribute portions of Land, and in his anxiety to encourage Settlers, he not only issued written Grants, but gave a general, indiscriminate, and *verbal* permission which has never been withdrawn, for clearing and occupying the Land, and even pledged the faith of Government in a Public Circular Declaration in 1788, that every person settling and clearing Land on Penang, should become virtually possessed of a property in the soil to him and his Heirs for ever". (Italics original). See *ANM/MISC.19*: 'Minute on Landed Tenure of Prince of Wales Island: 15 August, 1823.'

24 Oliver Phipps and Judith Sihombing, 'Land Law in Penang and Malacca', in Ahmad Ibrahim and Judith Sihombing, (eds.), *The Centenary of the Torrens System in Malaysia*, Singapore: 1989.

As a result of the initial confusions which continued to prevail throughout the terms of Light's early successors,[25] by the turn of the nineteenth century, grants issued in Penang consisted of multiple tenurial rights such as

(a) verbal licence: a form of permission to clear and occupy land with an assurance that regular written Grants would be issued at a future date. No restriction was imposed and possession was heritable. Very considerable quantity of land was believed to have been offered in this manner;

(b) cutting paper: a certificate permitting the clearing and occupying of a certain area of land but reserving to the Government the right to resumption subject to payment of compensation of five dollars per *orlong* and with a condition imposed on the proprietor to clear the land within twelve months;[26]

(c) measurement paper: a preliminary and valid document in the form of a certificate from the Native Land Surveyor containing actual measurement of tracts of land cleared based on the authorities of a verbal licence or a cutting paper. This heritable and alienable certificate contained no restricting clause on the settler, nor did it reserve the Government's rights to resumption or to payment of quit rent;[27]

(d) grant: official deeds issued to settlers consequent to their previously held verbal licences, cutting papers or measurement papers. These were usually in perpetuity with some subject to other conditional clauses;[28] and

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25 See Appendix 1.1.

26 See Appendix 1.2.

27 See Appendix 1.3.

28 By 1823 three types of grants were issued. In one of such cases, in a grant issued to one John Glass and Heirs for a piece of land within George Town, initially it was issued in perpetuity without any clause or reservation other than payment of an annual quit rent of one or two Spanish Dollars regardless of the size of the land. Then in 1795 during Superintendent Mac Donald's time, whilst the intent and purpose of the earlier grants were retained, the annual quit rent was converted into a direct land tax, with a new increased rate of two *chopongs* or twenty pice per *orlong* or equivalent to nine pence per acre. A third type of grant was those issued during Colonel Bannerman's time. The intent and purpose of the earlier grants were again retained but based on a regulation introduced in 1818, the time and place for payment of the annual quit rent were specified and landholders were notified that "on failure of...Annual payment being duly made, the Grant [would] be null, and void, and the

(e) prescriptive rights: occupation of land over long period without formal permission including the taking over of land abandoned by its previous duly permitted occupier.[29]

The absence of proper instructions on land disposal was made worse by the lack of proper survey and other administrative problems. Thomas Pigou's two incomplete surveys of the island between 1795 and 1797 were attributed to the deaths of Superintendents Mannington and MacDonald. Another survey undertaken and completed by Phillip Mannington [the second] late in 1802 during Sir George Leith's term turned out to be useless when Leith inadvertently lost Mannington's accompanying report on the state of the population and cultivation of the island. When finally one Mr. MacCarthy, a professional Land Surveyor came and completed his survey in 1806, he found that it differed widely from the earlier grants,[30] measurement papers and cutting papers.

In 1797 the Government rescinded its 1794 instruction to Light to restrict leases to a five-year term. It not only endorsed previous alienation and confirmed the status of earlier grants but also reaffirmed the perpetuity of future grants while attempting to limit each new lease to not more than twenty five acres.

Clear attempts at regulating land alienation, registration of titles and improving revenue collection were undertaken by MacDonald. Other than instituting the cutting papers, he also altered and introduced new clauses into grants by converting into direct

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Ground [would] revert to the Honourable Company." About 2,258 *orlongs* of land were issued under the first grants, 10,363 *orlongs* under the second and 431 *orlongs* under the third. *ANM/MISC.19*, *op.cit.*, p. 65.

29 Das, *op.cit.*, described these as 'long occupancy of lands, seized without any regular permission,' while Sihombing, *op.cit.*, described them as "English type of prescription rather than that of Malay customary law prevailing in other States." But even as early as 1806, as Judge and Magistrate of the Prince of Wales Island, John Dickens had already questioned the fitness of anyone attempting to apply the principle of title by prescription according to English laws. He argued that whilst the law necessitated a period of sixty years, the island had been inhabited hardly twenty years.

30 One such example involved the survey of one Mr. Ibbetson's land, Grant 1618 of the District of Ayer Etam. *CO/273/2*: 'Resident Councillor of the Prince of Wales Island to Secretary to the Governor of Straits Settlements, 30/11/1858.'

land tax the previously fixed annual quit rent of $1-2 per grant into a new rate of two *chopong*s or one-fifth dollars per *orlong*.[31] He also strongly opposed land speculation which was then quite rampant. This parrtly explained why, apart from being disliked by the settlers, he was also reported to be 'ill-pleased with his own result.'[32]

To prevent improper speculation in land, George Leith in 1800 proposed and obtained the approval of Government to include a specific clause requiring cultivation in future grants. But, for no apparent reason, he failed to include the cultivation clause in these grants. His attempts to undertake the correction of land boundaries also failed when, highly suspicious[33] of the implications on their titles of the proposed new cultivation clause, no one among the public came forward to surrender their grants, measuring papers, cutting papers or proof of verbal licences.

In 1803, John Dickens as Judge and Magistrate in the Prince of Wales Island, failed in his attempt to introduce a system of registration of deeds. He was also noted for his strong disagreement with any other forms of claims[34] to titles in Penang and his reservations over the applicability of English prescriptive rights.

This was followed by a proposal that survey be undertaken pending which no new grants were to be issued. The reason for this was the lack of surveyors and the shortage of trained staff. Nevertheless, during Robert Farquhar's brief one-year governorship, he

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31 Books at the Accountant's Office did not show any annual quit rent collection before 1795 but from 1795 to 1800 nearly $500 were collected, from 1800 to 1805 more than four times the amount were collected and from 1806 to 1823 collections nearly reached $24,000.

32 John Cameron, *Our Tropical Possessions in Malayan India*, Kuala Lumpur: 1965, p. 312.

33 In 1805 owners of 153 new grants signed by George Leith refused to collect their land titles despite the non-inclusion of the new cultivation clause in them.

34 "To admit a claim of individuals that [has no legal or equitable titles] would neither be *just* nor *politic*, for it might cover fraud, violent or secret intrusion, and any unjust decision of persons, now absent from the Island.." *ANM/MISC.19, op. cit.*, para 90. Dickens, however, proposed the setting up of a Commission to justly consider those claims.

succeeded in converting all 'cutting papers' and other claims to fee simple grants.[35]

The government suffered another setback about fifteen years later when in 1818 it lost a test-case of an amicable suit[36] which it had brought against one David Brown, described as 'the greatest Landholder on the island'.[37] The government had intended to implement its proposed resumption of lands the quit rents of which had either not been paid or were in arrears. The Court of Judicature's decision was explained by the fact that

(1) the affected grants when previously issued were without a legal clause subjecting them to resumption,

(2) there existed no real land records[38] and proper survey, and

(3) the Government's own irregularity in collecting earlier rent justified some sort of *estoppel*.[39]

In consequence of the decision, from October onwards new grants issued contained Governor Colonel Bannerman's clause demanding and detailing landholders' strict adherence to their quit rent obligations.

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35 Phipps and Sihombing, *op.cit.*, p. 70. Lands held in fee simple means though subject to the payment of a quit rent, they are however free in the sense that they are alienable and heritable. According to Charles M. Andrews in his 'Introduction' to Beverley W. Bond, Jr., *The Quit Rent System in the American Colonies*, New Haven: Yale University Press, 1918, p. 15, in Massachussetts the usual phrases stated in the land deed were, "to be held forever in fee without any incumbrance whatever," "free from all and every claim or future pretence or demand," "a good perfect and absolute estate of inheritance in Fee Simple without any manner of condition, reversion or limitation whatever."

36 Amicable suit, n. (law) A suit promoted by arrangement in order to obtain an authoritative decision on some point of law (*The Concise English Dictionary,* Dorset: 1988). In 1813 and 1814 the government issued proclamations reminding landholders of possible resumptions of their land if quit rent is not paid. But enforcement of the resumption proposal was only attempted in 1818. Refer Chapter III of the present study for further details.

37 *ANM/MISC. 19, op. cit.*, para 95.

38 This was despite the fact that to facilitate registration and dealings of grants, cutting papers and measuring papers, a registry was set up in 1792 and kept by a Native *Akeem Bundar* [Hakim Bandar] or Judge of the Port to record the sale and transfer of land. Reestablished in 1796, the register reportedly remained irregularly kept up to 1819.

39 Estoppel, a legal term used by Phipps and Sihombing, *op. cit.,* means an act or statement that cannot legally be denied; a plea alleging such an act or statement (*The Concise English Dictionary, op. cit.*).

Legal complications continued to beset Penang's land administration. Other than the multifarious types of grants,[40] failure of surveys and shortage of staff, in 1837 the *Bengal Regulation 1 of 1831*, the first registration law which had been in force in Penang for some time[41] was repealed and together with other Indian and local enactments, the regulation was declared invalid in the Straits Settlements.

In the same year, W.R. Young was appointed a Special Commissioner under *Indian Act XX of 1837*, to enquire into land problems in the Straits Settlements. With the exception of his argument for longer agricultural leases to attract genuine agriculturalists particularly to Singapore, major portions of his proposals such as those dealing with unauthorised occupation of Crown lands, granting of leases and permits pending survey, erection and maintenance of boundary marks, subdivision of grants, and collection of land revenue, were accepted and formed the basis of *Indian Act XVI of 1839* (commonly known as the *Straits Land Act*). Though it lasted until 1886, the high expectation from the Act, which provided for detailed regulations on land title, collection of revenue and the registration of transfers, to solve land administration and tenure problems, also faded, largely due to the shortage of staff and poor land surveys.[42] In his memoir Colonel Anson,[43] Penang's Lieutnant-Governor from 1867 to 1881, further attributed Penang's 'hopeless state of confusion' to the failures of the Land Office to remove, fine or evict squatters on State land, to insist on and ensure the placing of boundary marks by the land

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40 Such as those issued since the early days of Captain Light and followed by Mac Donald's 'land tax' grants, those issued in 1814 including Bannerman's grants from 1818 onwards in which regular rent payment was stipulated, those with short-term leases of between ten to twenty years issued from 1827 onwards, and, fee simple grants issued by the Government of India from 1858 to 1867.

41 Das, *op.cit.*, p. 60; Also alluded to by Makepeace, et. al., *op.cit.*, p. 304.

42 In para 14 of his report of 27th June, 1883, W.E. Maxwell remarked, "...the staff allowed by the Government of India for the offices of the various Collectors was never sufficient, and there is little reason to believe that, at any period of the history of any one of the Settlements, the measurement of land and the issue of titles kept pace with the occupation and cultivation of land. The Government has never, therefore, been at any time in full possession of its rights, and it is impossible to derive, from the land and survey records available for reference at the present day, a correct idea of the real conditions of ownership and title." *ANM/SS7*: 'Papers Laid Before the Legislative Council on Land Administration, Vol. II: Commissioner of Lands Titles, Report of 27th June, 1883'.

43 Das, *ibid.*, p. 53.

owners, and its inadequacy in ensuring collection of revenue.[44]

In 1851 a formal survey, known as the Moniot[45] survey, was undertaken followed by the Kelly survey in the 1880's. Though these were complemented by the passing of *The Land Marks Ordinance 1882* and *The Boundaries Ordinance 1884* and a series of enactments introduced to regulate land alienation and registration of dealings, Penang remained saddled by the complexities of its land tenure.

As a well-established Settlement with long historical traditions, Malay customary law on land tenure, be it based on the '*Adat Perpatih*' (matrilineal custom) or the '*Adat Temenggung*' (patrilineal custom), had very early been recognised in Malacca, not only by the Portuguese and the Dutch, but also by the British Courts.[46] Thus in such a settled society Malacca's land policy was never drawn to attracting settlers. But in their haste, early British administrators had committed two grave errors in their mishandling of the Dutch *concessionaires* problem and the Naning issue.

Though when the British finally repossessed Malacca in 1825, they also claimed to have taken over from the Dutch 'a mass of land problems,'[47] these problems were not as deplorable as Penang's. The first major problem in need of urgent solution concerned the Dutch type of rural land grants. Three types of land proprietorships were already in existence in Malacca, namely:

(a) the urban landholding which required titles and dealings to be proved before the Dutch Court of Justice;

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44 Sihombing, *op. cit.*, p. 145-146.

45 Appointed as surveyor in Penang in 1846, Mr Moniot rose to become Surveyor-General of the Straits Settlements in 1856. *ANM/SS7*: 'Papers', *op. cit.*, para 40.

46 Cited by Salleh Buang, *op. cit.*, p. 3 and Newbold, *op. cit.*, p. 161. The cases were heard in 1829 and 1870 respectively.

47 David S. Y. Wong, *op.cit.*, p.19. According to Newbold, *op.cit.*, p. 162, when the British took over Malacca in 1825, they found that "scarcely a foot of land, with the exception of a few spots near the town, belonged to Government" since the rest were presumed to have been granted by the Dutch to 'various individuals'.

(b) the holding of country lands in the form of *concessionaires* which the proprietors claimed entitled them to inviolable freehold as well as a tithe from the occupier or cultivator; and

(c) the Malay customary proprietorship right of a cultivator to clear and occupy land subject to payment of the tenth.

Unlike the Malay customary land tenure, the first two were 'well-recorded and documented Dutch grants.'[48] It was the *concessionaires* that became problematic to the British administration. If their *status quo* remained, the British administration would arguably find itself dealing with a group of private landlords whose existence and inviolable rights could, according to Wong,[49] paralyse the future development of Malacca.

As the first Governor of the Straits Settlements, Robert Fullerton in 1828, sensibly set himself the urgent task of solving the '*concessionaires* problem.' Against the two-fold claims of the *concessionaires*, he argued that the previous Dutch Government had not given up to the proprietors absolute right of ownership over land; what was given up was only the Government's right over it *vis-a-vis* the imposition of the tax of one-tenth of the produce.[50] Whilst he disputed the proprietors' claim to fee simple, Fullerton purchased their rights to imposition of the one-tenth tithe.[51]

Surrender of the tithe-impropriators' right was later nullified when the formalising legislation, *Regulation IX of 1839* was declared invalid. This was caused by the presence of conditions in the surrender agreement which stipulated that the surrender would only continue to be in force "...so long as the British rule in the said district (Malacca)

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48 Phipps and Sihombing, *op. cit.*, p. 73.

49 Wong, *op. cit.*, p.19.

50 *Ibid.* Fullerton equated the proprietors' (whom the British administration called tithe-impropriators) rights to those made by a Malay Sultan to his subordinate local chiefs with the underlying premise that the soil of all land remained vested only in the Sultan.

51 The tithe-impropriators were, in actual fact, made to surrender their lands in exchange for a fixed annual payment by the Government. Wong, *ibid.*; Sihombing, *op. cit.*, p. 145.

continued..." and that, "...every such person in the event of the cessation of the British rule in the said district should reserve their right then conditionally surrendered to the British Government..."[52] Das noted that since some of the persons who surrendered their rights were tenants for life, the surrender agreement raised a pertinent question which deprived the Government of the right to deal freely with the land.[53]

The problem was only resolved when *Act No. XXVI of 1861* was passed, which provided that all such lands were to vest in the Crown in exchange for an annuity paid by the Government in perpetuity, and re-alienation of fee-simple grants to the former title-holders subject to a quit rent. This settlement betrayed the fact that what was finally surrendered to the Government was not the claimants' rights to proprietorship of their land, but merely their right to exact one-tenth of the produce from the tenants and cultivators.[54]

Related to the question of the tenth was the issue of Naning. Based on their treaties of 1641 and 1680 with the Dutch Governor of Malacca, the *Penghulu* of Naning and his chiefs agreed to pay the tenth on Naning produce to Malacca.[55] This agreement had been kept ever since, until Malacca was finally taken over by the British in 1825. In 1801, Lt. Col. Aldwell Tylor, the British Resident at Malacca made a treaty[56] with the

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52 Das, *op. cit.*, p. 69. Such a settlement was also considered as extraordinary and made it seem "impossible for our Government to grant them [the claimants] fee simple." Cameron, *op. cit.*, p. 227.

53 Das, *ibid.*, pp. 69-70.

54 *Ibid.*, p. 70. As far as the final settlement was concerned, the Government fared far worse than what Fullerton had earlier attempted to achieve.

55 Naning, a customary territory bordering Malacca and very much affinated to Negri Sembilan in terms of their socio-cultural traditions, though it was never taken possession of by the Portuguese, was under its sphere of influence. So also were parts of Johore stretching up to River Fermozo (Batu Pahat). Naning entered into agreement with the first *Land-voogd*, or the Governor of Malacca, Johann van Twist, as early as 15 August 1641. The agreement included matters affecting the distribution of property of persons dying without issue In fact, quoting Dutch sources such as Barretto de Resende (1638) and Schouten (1641), Winstedt, *op. cit.*, pp. 124-125, cited 'the payment of certain tithes and taxes by the vassal State of Naning' as having been instituted by the Portuguese.

56 Newbold, *ibid.*, Appendix XVII, pp. 454-459.

Penghulu and his chiefs under which the latter agreed to continue the custom of paying the tenth to Malacca, though with payment now made to the British instead. But due to the prevalence of poverty in Naning, the Resident agreed that *in lieu* of the tenth, the *Penghulu* should present annually to the Resident, 400 *gantang*s of paddy. This practice went on uninterrupted for over two decades up to 1824. After some initial slip-ups leading to the final Dutch - English change-over of Malacca, in 1827, the *Penghulu* of Naning came to Malacca to present his 400 *gantang*s of paddy.[57] This time a new problem cropped up. The British took advantage of the *concessionaires*' land surrender and demanded that the Naning leadership too surrender their lands and Naning be put under the direct superintendency of Malacca. Feeling deeply humiliated, the Naning leadership defied all demands. The resistance finally led to war[58] the result of which raised controversial issues related to Malacca's land and judicial system.[59] In fact a trivial land dispute between one encik Surin and the *Penghulu* of Naning was fully exploited by the British as an excuse for intervention, then war.[60]

Whereas the Dutch administration had managed surpluses[61] of 4,000 dollars in

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57 D.P. Banerjee in his 'Introduction' to P.J. Begbie's *The Malayan Peninsula*, 1834, reprint: Kuala Lumpur: Oxford University Press, 1967, claimed that as early as 1744 payment of the tenth had been commuted to 400 *gantang*s. But from 1746 to 1776 only 200 *gantang*s was paid as tribte in lieu of the tenth; the other half (200 *gantang*s) being remitted 'on account of poverty of the inhabitants' (p. 62). He also quoted from a British source, the 'Bengal Secret and Political Consultations, Vol. 363, 25 November 1831, Nos. 69-70,' that 'by the 1760's the tenth had been commuted to annual tribute of 400 *gantang*s of paddy' though by 1831 the quantity was said to have formed only 'about a thousandth part of the total annual produce of Naning' (p. 3).

58 Allen, *op. cit.*, p. 36, considered the Naning War of 1831-32 as a "clumsy and costly military expedition" undertaken by the British in order to gain a small 'state' of Naning. Makepeace, et. al., *op. cit.*, p. 23, summed it up as a "very inglorious page in the history of British arms [for] it cost £100,000..." To R.J. Wilkinson, *Papers on Malay Subjects*, selected and introduced by P.L. Burns, Oxford university Press, Kuala Lumpur, 1971, pp. 301-302, "the real part at issue between the English and the Dato' of Naning was a matter of 200 gantangs of rice, worth a few dollars at the very outside..."

59 Andaya, *op. cit.*, p. 123.

60 See Abdullah Ghazali Zakaria, 'Perjuangan Orang-orang Melayu Naning Menentang Inggeris 1831-32,' *Jernal Sejarah*, Jilid XV, Kuala Lumpur: Jabatan Sejarah Universiti Malaya, 1977/78, pp. 12-25.

61 As reported respectively by Stamford Raffles and William Farquhar (Newbold, *op. cit.*, p. 169).

1807 and 3,169 dollars for the period between 1812 and 1818, the British administration, largely saddled by these two problems, experienced losses from 1828 to 1836. This state of financial affairs was believed to have landed Fullerton into trouble for "the revenue of the Straits did not increase as the expenditure certainly did."[62] Though losses were also attributed to mismanagement both in the cultivation of the lands and in the collection of the tenth, Newbold[63] levelled the main blame against Fullerton for founding his 'conclusions on very erroneous data'. Unfortunately Newbold himself relied on reports of W.T. Lewis, the Assistant Resident of Malacca in 1828 and its Superintendent of Lands in 1835-1836 whose assertion of Malacca's suzerainty over Naning was itself disputed as erroneous by fellow British administrators, namely Samuel Garling and John Anderson.[64]

When the Government undertook the *concessionaires* exercise, it had also committed itself to issuing land titles to peasant occupiers and to carrying out a comprehensive land survey. Unfortunately due to financial deficit the survey office was abolished by the Government in its 1830 economy campaign.[65] Without proper survey the different status of lands remained ambiguous and the areas obscure. In July 1859 the Resident Councillor, R. Macpherson in response to the Governor's request for a map of Malacca indicating the amount of commuted and uncommuted lands recommended the payment to one *penghulu* 'Mowlote' of 'Bally [Balai] Panjang' of a 20-dollar per month gratuity for three months for helping with survey works.[66] The Surveyor-General himself,

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62 Makepeace, et. al, *op. cit.*, p. 82.

63 Writing in 1839, Newbold, *op. cit.*, pp. 162-171, faulted Fullerton for having caused 'a dead loss to the state of upwards of 10,000 rupees annually' and having 'saddled Government with...the annual payment to the former proprietors [of Dutch titles], of 16,270 rupees.'

64 Abdullah Ghazali, *op. cit.*, pp. 13-14. Banerjee, as in Begbie, *op. cit.*, p. 6, concluded that from early primary sources of both English records and Dutch archive document at Malacca, 'Naning was never a part of Malacca's territory'. He further attributed British policy over Naning to 'zealous policy of Lewis'. See also Mubin Sheppard's *Taman Budiman: Memoirs of an Unorthodox Civil Servant*, Kuala Lumpur: Heinemann Educational Books (Asia) Ltd., pp. 73-74, on his account of Sir Andrew Caldecott's admission of Lewis' wrongful advice and judgment on the Naning issue.

65 C.M. Turnbull, 'Malacca under British Colonial Rule', p. 249, in Kernial Singh Sidhu and Paul Wheatly, *op. cit.*

66 *CO 273/5*: No. 83 of 1859: 'Remuneration to a Penghooloo for Assisting the Surveyor.'

D. Quinton[67] who was sent to Malacca in 1861 remained there for several years and managed to survey and settle the coastal districts which made up about a quarter of the territory of the Settlement.[68] When he retired in 1871 no one proceeded with his uncompleted work and further survey and land-settlement efforts were abandoned.[69]

Where Singapore was concerned, its early land policy was a mixture: to attract permanent settlers and to obtain for the Government the best amount of revenue to compensate for the loss of its land.[70] As such Raffles reminded his successor, Colonel William Farquhar of the necessity to ensure every person's indisputive possession of the land he occupied, the need to keep proper registers, to grant certificates, to undertake proper land measurement and to attach the necessary regulations or conditions of alienation.[71]

As early as the beginning of 1823, instructions were received from India specifying that land be let either on perpetual leases or for a term of years to the person offering the highest amount of quit rent. This was quite a fair policy, but while the Government in Bengal had intended the lease to be for a period not exceeding 99 years, the local authorities argued that "in the mind of the applicants a 99 year lease conferred too limited

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67 Initially appointed as surveyor of Malacca in 1859. After his death the post of Surveyor-General was abolished and amalgamated with the post of a Colonial Engineer.

68 The Resident Councillor reported that the surveyor would need another 61 months to complete the survey and mapping of the remaining 871 square miles. *CO/273/5* No. 5 of 1860: 'Narrative of the Proceedings of the Court of Straits Settlements During the 1st. Quarter of 1860. Collection 25.'

69 *ANM/SS7:* 'Papers', *op. cit.*, para 67. Because of his familiarity with the area and the people Quinton was reportedly expected to have been able to complete survey and mapping of the remaining 871 square miles of the territory within thirty months instead of the normal sixty-one. See also *CO/273/5, No.* 109 of 1860: 'Narrative of the Proceedings of the Government of Straits Settlements During the First Quarter of 1860,' *op. cit.*, Collection 24).

70 This arose out of the Supreme Government's determination to administer Singapore's affairs distinctly from those of Penang on account of their political and commercial differences. (Newbold, *op. cit.*, p. 278).

71 Much information of the period was obtained from James Lornie, then the Collector of Land Revenue, Singapore, in his article entitled 'Land Tenure' in Makepeace, Brooke and Braddell, *op. cit.*, pp. 311-314.

an interest in land."[72] By the end of the year, a total of 576 leases in the forms of *certificates of occupation*[73] and *location tickets*[74] were reported to have been issued.

In his report of January, 1824, John Crawfurd who succeeded Raffles, suggested that efforts be made to attract and encourage agriculturists to open up land by proposing that they be given good and simple but permanent tenure, with few formalities of transfer. He also proposed that these holdings did not confer on them real property rights as in England and advised that to avoid speculation in large areas of land, prospective settlers be subject to location tickets first.[75]

As his suggestions were accepted and he was in the following year authorised to issue the tickets or grant leases to persons having commercial establishments at Singapore or desiring to settle there, Crawfurd soon discovered that within two years of the authorization, location tickets had apparently been issued in great numbers within the town vicinity to the extent of "only 14,000 acres short of the whole area of the island."[76] Other than the absence of a registration, it was also realised that survey work would not be able to cope with the rush of applications, for a year before, about 13,800 acres of land had been cleared and occupied without title. This was said to have stemmed out of two factors, namely, the sudden increase in population, and the strong tendency among occupants to postpone their applications for permanent titles to avoid payment of rent.[77]

In 1828, the Government resumed 217 lots of leasehold land which by 1 May of

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72 Makepeace, et. al, *ibid.*, p. 302.

73 *Certificates of occupation* conferred only the privilege of rent free occupancy, without conferring to the holder any rights over the land or its transferability to others.

74 A *location ticket* conferred on its holder the privilege of temporary possession for two years to clear the land and enabled him to apply for a regular lease upon his successful clearing of the land.

75 While the land was to be properly surveyed the settler had to clear it within a specified period.

76 *Ibid.*, p. 303.

77 *Ibid.*, pp. 303-304.

the same year had not complied with the 'agriculture' or 'building' conditions attached to them. At the same time, new leases were issued for 481 lots totalling 313 acres of land which complied with their conditions of titles or location tickets.

Next the Government dealt with terms of long leases which became the subject of the *Singapore Land Regulation of 1830*. Governor Fullerton had fixed a 999-year term for leaseholders of land within town limits subject to annual quit rent at forty-five dollars an acre. As he found it difficult to determine a fair rent for land outside town limits, Fullerton introduced the principle of renewable lease. By this, an applicant who cleared the land he applied for within the specified period would be eligible to apply for its survey and would be entitled to a series of 15-year leases subject to a gradual quit rent up to a maximum of ten dollars; and, at any time during the tenancy, he would also be entitled to a 999-year lease subject to a maximum rate.

Other than providing for the appointments of a Superintendent of Lands, a Registrar of Titles, Transfers and Mortgages, and a Collector of Quit Rents, the *Regulation* approved Fullerton's proposals, with the exception of the 999-year agricultural lease which he was asked to reconsider. While sanctioning all leases which had already been granted prior to the approval, the Bengal Government prohibited any such leases in the future. But by 1833, 415 acres had already been granted fifteen-year leases under the old invalid *Regulation*.

In the same year of his appointment, Special Commissioner Young in 1837 published the Government notification that land which had been occupied, cultivated or improved with irrigation or buildings be granted twenty-year leases renewable at a fixed rent for a further 30 years. In the case of town lands, it was to be a sixty or a ninety-nine-year building lease. This resulted in the immediate issuance on 1st January next alone of seventy one 99-year leases. Young's proposal for a longer agricultural lease in Singapore in order to compete with Penang, Province Wellesley, Malacca, and even Ceylon whose offers were already more favourable, and, to attract genuine investors and discourage speculators to the island, was not accepted. The existing policy remained in force until

1843[78] when the Government of India approved the proposal by Acting Governor S.G. Bonham for alienation in fee-simple of all land outside town limits for agricultural purposes.

Of significance was Bonham's declaration that "the object of the Government in relinquishing their rights in the soil for ever was not so much to secure an immediate and adequate pecuniary return as for the purpose of creating improving proprietors."[79] That declaration was underlined by a strong flourishing agriculture.[80] But from 1845 onwards when the leases were reported to have been issued in large numbers "the original intention of granting them for the encouragement of agriculture was soon forgotten" and, "the decline of agriculture started almost immediately afterwards."[81] It was only from 1880 onwards that more stringent terms were imposed[82] including the appearance for the first time of a condition prohibiting the use of land for burial purposes without the Governor's consent.

Like Penang and Malacca, survey remained the common problem. Even though a surveyor, J.T. Thomson, was appointed and sent to Singapore in 1841 to undertake the

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78 Other than those in Singapore, many land-holders in Penang and Province Wellesley whose grants and leases were subject to quit-rent also availed themselves of the Goverment offer of commuting the rent upon a lump sum payment of eight years' rent. *ANM/SP/16/7/4*: Surat Persendirian D.F.A. Hervey: 'Memorandum in Reply to Certain Parts of Lord Knutsford's Despatch, No. 277, of September 16th, 1890: Memorandum on the Revenue-Liability of Land-holders in the Straits Settlements, by W.E. Maxwell, British Resident, Selangor, 13th January, 1891,' para pp. 9-10.

79 Lornie, *ibid.*, p. 310. Note the land alienation policy change from that of obtaining "the best revenue for the loss of its land" to "not so much to secure an immediate and adequate pecuniary return."

80 C.K. Meek, *Land Law and Custom in the Colonies*, London: Oxford University Press, 1946, p. 34.

81 It is incomprehensible why no sooner administrative intervention ever occurred to halt the situation. Lornie, *ibid.*, p. 311, admitted, "the Government had as little success in their endeavours to create improving proprietors as they had in obtaining an adequate pecuniary return." Even then, "no change... was made in the land policy until the transfer of the Settlements to the Colonial Office in 1867" which was about 22 years later, and even when the change was in effect, it was found that "in *majority of cases the titles were 999-year leases*, which in some cases contained a *provision for renewal for a further period of 999 years* [and] rents...were very low...no onerous conditions..." *Italics* mine.

82 The stringent land regulation was attributed to reforms introduced by W.E. Maxwell. *CO/273/185*: Straits Settlements No. 22432: 'C.P. Lucas to R. Meade 17/11/1892.'

first proper survey, some forty years later, the absence of a systematic survey of the island was still cited as one of the great drawbacks of land administration. This was coupled with the inadequacy of the Land Office staff "which allowed encroachments on Crown land to go unchecked, and [which] favoured the accumulation of arrears of rent."[83]

At the time W.E. Maxwell[84] took over as Commissioner of Lands Titles of the Straits Settlements in 1882, he readily admitted the apparent unstoppable degeneration of land administration and the progressive worsening of the legal aspect of its affairs.[85] A comprehensive study of land revenue administration of the colony, particularly the history of land tenure in Malacca, convinced Maxwell that reorganization of the land revenue system and the resumption of survey operations in a systematic manner[86] were imperative and needed to be undertaken prior to any simplification of conveyancing by registration of title.[87] Thus followed a series[88] of effective legislations whose formulation and implementation were largely owed to his untiring efforts:

(a) *The Land Marks Ordinance (VII of 1882)* which defined the boundaries of land in occupation;

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83 Lornie, *op.cit.*, p. 311.

84 Together with Hugh Low and Frank Swettenham, Emily Sadka, *The Protected Malay States 1874-1895*, Kuala Lumpur: 1968, p. 209, includes Maxwell among three of the most effective of Malayan administrators. She remarked that "...the researches of Low and Maxwell went beyond the lively, energetic dilettantism of their colleagues;...Maxwell was an encyclopaedist in the best tradition of Malayan scholar-administrators...[p. 204]...had a far better intellect, and was a brilliant and energetic administrator, but his uncompromising rejection of work or conduct which fell short of the very high standard, and his combative spirit (a family trait) made him unpopular with his colleagues." Apart from the recognition for his 'highest personal integrity', Lim Teck Ghee ('The Origins of a Colonial Land Policy: The Development of Perak Land Legislation, 1874-97,' Paper No. 44, International Conference on Asian History, Kuala Lumpur: 1968) regarded Maxwell as 'the greatest and most under-rated administrator of Bristish Malaya' (p. 2).

85 *ANM/SS7, op. cit.*, para 44.

86 *ANM/SS7, ibid.*, 'Annual Report on the Land Department, Straits Settlements, For the Year 1884,' para 18.

87 *ANM/SS7, ibid.*, 'Annual Report on the Land Department, Straits Settlements, For the Year 1887,' para 61.

88 Sihombing and Phipps, *op. cit.*, pp. 72 and 74; Sihombing, 'Legal Essays', *op. cit.*, pp. 143-146; Das, *op. cit.*, pp. 63, 67 and 71-74; Lornie, *op. cit.*, p. 312, and *ANM/SS7, op. cit.*, 'Annual Reports' for 1884, 1885, 1886 and 1887.

(b) *The Crown Lands Encroachment (Ordinance X of 1883)* which made encroachment on Crown land an offence punishable with fine, and on a second conviction with imprisonment. It also provided for the resumption of abandoned land;[89]

(c) *The Boundaries Ordinance (VIII of 1884)* which provided for the demarcation of lands and the establishment and maintenance of boundary marks involving systematic surveys of each settlement, district by district, and the preparation of maps representing the holdings;[90]

(d) *Crown Lands Ordinance (II of 1886)* which introduced a new form of grant subject to certain conditions and restrictions with survey as a prerequisite;

(e) *Land Revenue Collection Ordinance (IV of 1886)* which not only provided for the examination of all holdings in every *mukim* with details of rent liability to each lot as recorded in a register but also introduced a system of levy on rent arrears;

(f) *Conveyancing and Law of Property (Ordinance VI of 1886)* which was designed to shorten and simplify the language of legal documents dealing with land;

(g) *Resumption by Crown of Certain Land in Malacca* (*Ordinance VIII of*

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89 Lornie, *op.cit.*, p.312. The number of cases of prosecution against illegal squatters under the Ordinance were:

Year	1885	1886	1887
Penang	158	177	424
Singapore	213	123	186
Malacca	n.a.	67	n.a.
Total	371	367	600

Source: *ANM/SS7:* 'Papers...: 'Commissioners' Annual Reports, For the Years 1885, 1886, and 1887.'

90 The *mukim*s became the focal area of reference of 'revenue areas' for land revenue designation purposes under the *penghulus*' jurisdiction; the clear determination of boundaries and area surveys of the *mukim*s with specific *mukim*-serial number and general survey numbers of all customary holdings; the proper recording and keeping in the land offices of registration of customary rights; and the issuance of extracts from the *mukim* registers to the landholders as evidence of their title attached with the endorsed title plan.

1886) which ultimately settled the problem of the *concessionaires* or seignorial land-holders' claims to rights to tithe;

(h) *Malacca Lands Ordinance (IX of 1886)* which abolished the tithe system, and substituted therefor the collection of a fixed assessment on all lands held under customary tenure; and

(i) *Registration of Deeds Ordinance (XIII of 1886)* which was designed to prevent secret and fraudulent conveyances and to provide means whereby the title to real property could be more easily verified.

The series of Straits Settlements ordinances complemented *The Straits Land Act* of 1839. Although they were quite sufficient to meet the needs of land issues of the day, the entire corpus, including the *Registration of Deeds Ordinance (No. XIII of 1886)* which came into force in Penang only on July 1, 1894,[91] was amended and consolidated from time to time.

The Malay States From 1874 to the Federation of Malaya, 1948.

As for the rest of the Malay States in the Peninsular, formal legislation came into being when they became British protectorates. Like Malacca, prior to that, the practice of Malay land tenure based on the general principles of customary laws prevailed. First attempts at regulating land tenure in the newly-constituted Residencies of the protected states were Selangor's *Rules for the Disposal of Land*, in 1877, and Perak's *Terms on Which Agricultural Land will be Granted*, in 1878. Earlier, in 1875, J.W.W. Birch, as the first Resident to Perak had issued his *Notice Regarding Waste Lands*, which *inter alia* provided for the issuance of permits to occupy and cultivate waste lands for three years free of charge.[92]

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91 In Singapore it came into force on July 1, 1887.

92 *CO 273/86*. Also enclosed as Appendix No. LXIV in P. L. Burns, *op. cit.*, p.159. Reproduced as Appendix 1.4 of the present study.

The 1877 *Rules* apart from stipulating term of lease of 999 years on agricultural land and imposing the payment of rent, also attached certain conditions pertaining to the commencement of cultivation within a specified period. It also provided for 99-year leases for building lots subject to quit rent. In the case of the Perak *Terms* the period of commencement of cultivation was specified to within 18 months from the concession of the lease. Sihombing regarded these early rules and terms more as "attempts to provide for uniformity in the disposal of lands than to regulate land tenure and the collection of land revenue."[93]

As tin was in Perak indisputably the activity of the day,[94] upon his arrival as Resident in 1877, Hugh Low, in addition to proclaiming the government's intention to impose head tax (or *hasil kelamin*) and land rent,[95] also introduced conditions of leases for mining land.[96] To stabilise the economy and to avoid over-dependence on mining, agricultural sector development was simultaneously undertaken through pioneer incentives given to agriculturists to the extent of the granting of land of up to 10,000 acres for free for a period of five years in the case of tea, coffee and sugar plantations subject only to its commencement of cultivation within a specified time. As the response was overwhelming, the Perak State Council introduced in 1879 the *General Code of Regulations Regarding Land (Notification 23 of 1879)* and, the *Special Regulations for the Leasing of Waste Lands (Notification 176 of 1879).*

Under the 1879 *Perak Regulations*, land was divided into three classes, namely:

(a) agricultural land with 99-year (originally 999-year) lease subject to

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93 Judith Sihombing, 'Land Law in the Federated Malay States until 1928', in Ahmad Ibrahim and Judith Sihombing (eds.), *The Centenary of the Torrens System in Malaysia,* Kuala Lumpur: Malayan Law Journal Sdn Bhd., 1989, p. 8.

94 Allen, G.C. and Donnithorne, A.G., *Western Enterprise in Indonesia and Malaya*, London: 1957.

95 At 40 cents per *orlong* on wet paddy and 25 cents per *orlong* on dry paddy.

96 Such as its being subject to payment of royalty and government's right to re-entry upon mines remaining idle. In 1878, due to very low tin prices, the royalty was temporarily removed from export duty from Perak.

premium and quit rent and Government's rights to minerals, to resumption on completion of lease term, and to reversion on breach of condition;

(b) town and country lands with 99-year lease subject to premium and quit rent and made available through public auction; and,

(c) mining reserves with 21-year lease subject to payment of royalties on minerals.[97]

The *Special Regulations* were specifically formulated for land previously occupied under incident of Malay tenure and provided for alienation not exceeding 99[98] years subject to premium and quit rent and subject also to liability to forfeiture on breach of conditions. In the same year similar *Special Regulations for the Leasing of Waste Lands* were introduced in Selangor[99] incorporating virtually the whole of Perak's *Special Regulations*.[100]

With the implementation of the 1879 Perak and Selangor *Special Regulations*,[101] the *mukim* register which had hitherto catered only for *Adat Perpateh*-held land in Negri Sembilan and Naning land in Malacca soon saw the inclusion and enrolment in its register

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97 Sihombing, *op.cit.*, 'Land Law,' pp. 9-11. Under Governor Weld, however, the State Council passed a resolution authorizing 999 year leases for lands in the area when sought for agricultural purposes (particularly with a view to the expansion of the sugar industry) at $3 per acre premium and 40 cents per annum quit-rent." *op. cit.*, p. 114.

98 In 1882 the term of lease in Selangor reverted to 999 years or to grant in perpetuity when the *General Land Regulations* (Notification No. 495) was passed, followed three years later in Perak (Order in Council No. XX of Perak or the *1885 GLR*).

99 Selangor's land regulations were very much modelled on Perak's and various incentives had been considered since 1875 to offer potential agriculturists the best possible incentives. See *ANM/Sel. Sect.12/1875;125/1875; 208/1786; 329/1877; 68/1879; 116/1879 and 138/1879.*

100 In April 1879, Colonel A.E.H. Anson, then Colonial Secretary, in alluding to the Perak experience reminded the Resident of Selangor of the need to protect 'native state with regards to State revenue from rent,' for Anson was particularly disturbed by the fact that in 1868 only about $60,000 out of $1.3 million revenue was received from land, and in 1877 it was only $114,000 out of $1.7 millions. In both cases land rent accounted only $27,000 and $50,000 respectively. *ANM/Sel. Sec. 158/1879*: 'Memorandum Relative to the Specific Leases of Land in Perak for Plantations Purposes.'

101 Negri Sembilan (Sungei Ujong), and Pahang followed suit by the passing of their *General Land Regulations* (*GLR*) in 1887 and 1889 respectively.

of other types of ordinary land.[102] The *Special Regulations* thus also provided for the conversion into leasehold, as alienated land, of land occupied under incident of Malay tenure.

The next major initiative at regulating land legislation took place in 1891 with the introduction in Selangor of the *Land Code (No. III of 1891)*[103] and the *Registration of Titles Regulation (No. IV of 1891).*[104] Upon succeeding Swettenham in 1889 as Resident of Selangor, Maxwell estimated that both the 1879 Perak *Regulations* which he helped formulate and the 1882 Selangor *General Land Regulations* had not achieved the desired results. Other than inefficient and low revenue collection, he found that permits were issued on unsurveyed and undemarcated land, rent-roll was improperly compiled, and land offices were in a state of confusion. Maxwell's 1889 Report on the Selangor land administration and his move to amend Swettenham's earlier land rules for the state[105] became one of the subjects of lengthy debates which ensued between the two.[106]

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102 Such as country land below a hundred acres (later revised to below 10 acres) held under Malay tenure.

103 Also known as *Maxwell's Code*.

104 Also known as *Selangor Registration, 1891*.

105 Sihombing, *op. cit.*, pp. 161-162 testified that though Maxwell's tenure in Selangor lasted only four years, records showed that in the year immediately following the implementation of the 1891 *Regulations* and *Land Code*, "land revenue increased, land settlement progressed, planters and miners developed lands. Selangor prospered." E.W. Birch wrote that 'the progress made in Land Administration under Mr. Maxwell's code in Selangor bore fruit in 1892...the revenue collected...amounted to $2,135,448 and is the largest sum that has ever been obtained in any year [exceeding] the estimated revenue by $188,693 and the collections of 1891 by $309,863...' *ANM/B/SUK2*: 'Annual Report of the State of Selangor for the Year 1892, by E.W. Birch, Secretary to Government, Perak lately Acting British Resident, Selangor.'

106 The subjects of their debates mainly centred on Swettenham's:

(a) refutation of Maxwell's claim of payment of the tenth to the Ruler as originally part of Malay custom;

(b) preference for annual fixed quit rent on land over Maxwell's proposed payment of premium on alienation of land, the principle of a land assessment rate, and periodic revision of the annual quit rent;

(c) objection over the drafting by Maxwell (then as Colonial Secretary of the Straits Settlements) of a land code for Perak for which state Swettenham himself was then the Resident; and

(d) rejection of Maxwell's proposal in 1894 for the adoption at some future date of a land policy common to all the four protected Malay States.

While the 1891 *Regulations* are considered as the legislation initiating the Torrens system, *Maxwell's Code* which dealt more formally with the issue of customary land deserves to be regarded as a precursor to the concept of 'Malay Reservation'.[107] Section 21 of the *Maxwell's Code* provided for the recognition of a "permanent transmissible and transferable right of use and occupancy" to a Muhammadan of agricultural land of which he had been in continuous possession for ten years and the rent of which he had duly paid.[108]

With registration being the nerve-centre of the Torrens system, the *Regulations*, *inter alia*, provided for more elaborate procedures relating to the preparation, issue and registration of grants, to dealings in the transfer and transmission of land, and to safeguarding the indefeasibility of titles to land.[109] Dealings involving lands held under lease and grant were recorded and registered in a central titles office in Kuala Lumpur and those under Malay tenure were kept in simple registers in the District Offices. Further, with the exception for agricultural land exceeding 100 acres and town land whose rents were fixed and not liable to revision, the 1891 legislations also provided for the assessment and periodical of revision of rents at intervals of 30 years for non-customary land held under grant, and at not less than seven years for those under customary tenure.[110]

Upon federation of the four Malay States in 1896, essentially uniform land

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107 The formal legislation of which only came into being in 1911 via a series of *Malay Reservation Enactments.*

108 Sihombing, 'Land Law,' *op.cit.*, p.11.

109 Wong, *op.cit.*, pp. 112-113.

110 Maxwell's proposal for the creation of two parallel land titles in Selangor had been obvious right from the beginning. See *ANM/B/SUK2*: 'Annual Report of the State of Selangor for the Year 1890 by W.E. Maxwell, British Resident Selangor.' In an amendment introduced in 1892, holders of lease of land under the Selangor Land Regulation 1892 shall, on surrender of the lease agreement, be entitled to (i) the issue of a grant under the 1891 Land Code subject to payment of premium and quit rent, if the land were waste land and grant have been applied for, or (ii) may hold the land under customary tenure subject to assessment and other incidents of the tenure. *ANM/B/PU1*: 'The Laws of Selangor, Pt.1, 1877-1899.'

enactment which had earlier been proposed by Maxwell but strongly objected to by the Residents led by Swettenham was passed by the respective States[111] with the adoption of the 1891 Selangor legislations.[112] The *Registration of Titles Enactments* which dealt with land held under grant in perpetuity or State lease of not less than 999 years, *inter alia*,[113]

(a) reaffirmed the vesting of all land in the Ruler who could alienate it subject to specific conditions including the payment of quit rent, the maintenance of survey marks, and the fulfilment of cultivation condition;

(b) underlined the principle of dealings in land in strict conformity to provisions of the *Enactment*[114] which otherwise would render such dealings null and void and of no effect; and,

(c) assured indefeasibility of title except in cases of fraudulent, misrepresented and forged instruments of dealings, and disproved adverse possession of State land.

The *Enactments* were repealed and re-enacted in 1903[115] with a minor amendment allowing a claimant to country land below 100 acres to apply to the Collector of Land Revenue to have his (the claimant's) name entered in the *mukim* register despite the prevailing entry of another or the occupation of the land by another, and leaving to the decision of the Collector to determine which of the persons were rightly entitled to the entry.

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111 *Viz*: (i) Negri Sembilan in 1897 and 1898: *Land Enactment No. XXIII of 1897* and *Registration of Titles Enactment No. III of 1898*; (ii) Pahang in 1897: *Land Enactment No. 28 of 1897* and *Registration of Titles Enactment No. 29 of 1897*; (iii) Perak in 1897: *Land Enactment No. 17 of 1897* and *Registration of Titles Enactment No. 18 of 1897*. That of Selangor was also amended.

112 Swettenham had, by the coming into being of the newly-instituted Federated Malay States, become its first Resident-General. Ironically it was in his new capacity as Resident-General that Swettenham recognised the necessity of "a land policy common to all the States" as originally propounded by Maxwell who, in 1894 had departed for the Gold Coast. Sadka, *op.cit.*, p. 343, in describing the turn of events, concluded that the uniform *Land Enactment* "though...framed at Swettenham's instance...was a qualified victory for Maxwell."

113 Sihombing, *op.cit.*, p. 15.

114 Subsequently modified by the *1928 Land Code* and replaced by the *National Land Code, 1965.*

115 As *Land Enactment* Selangor (No.8), Perak (No.13), Pahang (No.17) and Negri Sembilan (No.17).

These *Enactments* were again amended in 1906. Consequent to the passing in 1909 of the *Customary Tenure Enactment*[116] another amendment was introduced to preserve *Adat Perpateh*-land which, by the previous two *Enactments* of 1897 and 1903 had been entered under the *mukim* register. The 1909 amendment was meant to distinguish from other land enrolled in the same *mukim* register *adat perpatih* land which was vested in the tribe[117] and registered in the name of female members of the family, by being so endorsed. It also provided for the transfers and charges of such land, subject to the approval of the tribal *Penghulu*, or for its sale, to be confined, as far as possible, within the same tribe, failing which the tribal land would lose its classification as such.[118]

The first ever unified land legislation under the Federated Malay States took place in 1911 with the introduction of the *Land Enactment*[119] and the *Registration of Titles Enactment*[120] which merely repealed and 'federalised' without amendment, the previous state *Enactments* of 1897. This was followed by the passing in 1926 of another piece of legislation consolidating both the *FMS Enactments* under a single *Land Code, vis-a-vis Cap. 138*, which came into force on 1 January, 1928.[121]

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116 No. 17 of 1909.

117 Thus, within any *adat perpatih* territorial enclosures *(luak)*, there may exist two types of country land: the customary land which is vested in the tribe, and, the Malay tenure land, vested in the Ruler. It must be noted, however, that unlike in Negri Sembilan, *adat perpatih* as practised in Naning, allows for the inheritance of customary land by the male line.

118 The enactment was again amended in 1926 as *Customary Tenure Enactment (No. 1 of 1926)* Negri Sembilan - cited as *Cap. 215* (Revised Laws)(FMS) - to provide for more stringent dealings in customary land and its adaptation to subsequent legislation beginning with the *1928 Land Code* or *Cap. 138*.

119 No. 11 of 1911 (FMS).

120 No. 13 of 1911 (FMS).

121 J.V. Cowgill, 'Systems of Land Tenure in the Federated Malay States,' *The Malayan Agricultural Journal*, 16, No. 5, May, 1928, p. 181. Note the lapse of about two years between the passing of the *Land Code* in 1926 and its effective date of coming into force, i.e., 1 January 1928. Das, *op. cit.*, and Wong, *op. cit.*, referred to it as the *1926 Land Code* thus differing with Sihombing who referred to it as the *1928 Land Code*. *Cap. 138* is henceforth preferred in the present study.

Some features of the *Cap. 138* amendments were:[122]

(a) the complete assimilation between titles enrolled in the *mukim* register and those in the Registry Office while at the same time retaining both separate offices for the *Mukim* Register and the Registry Titles;[123]

(b) the enrolment in the *mukim* registers of alienated land below 10 acres;[124]

(c) the prohibition against the obtainability of title against State land by prescription;

(d) the indefeasibility of title except where an interest on title had been obtained by fraudulent means or the execution of dealings by way of ineffective instruments;

(e) the extension to *mukim* registers of power to create lien;

(f) the introduction of a new system for the collection of the annual quit rents; and

(g) the allowance for variations in statutory forms of instruments of dealings.

Other than the *Titles to Land (Occupation Period) Ordinance (No. 39 of 1949)* which invalidated most alienated lands effected during the Japanese occupation but verified the validity of dealings in land effected during the same period, *Cap. 138* remained until the coming into force of the *National Land Code*[125] with effect from 1 January, 1966.

In the Unfederated Malay States laws related to land tenure developed independently within each state. Though some of the legislation essentially followed the structure of the 1926 FMS *Cap. 138*, 'they tended to be less elaborate'.[126] In Trengganu,

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122 Sihombing, 'Land Tenure,' *op. cit.*, p. 165. In his book, Das (*op. cit.*, pp. 95-451) provided detailed discussion on the various aspects of the *Cap. 138* such that it forms three-quarters of the contents of the book.

123 The Mukim Register is kept in the district land offices whereas that of the Registry is kept in the State capital by the Registrar of Titles of the office of the State Director of Lands and Mines.

124 Previously below 100 acres.

125 Act 56 of 1965. Henceforth referred to in this study as the *Code*.

126 Das, *op. cit.*, p. 467.

prior to the passing of land enactments, the prevalent customary tenure allowed any Muslim to occupy and cultivate for himself both agricultural and waste lands, subject to the payment of *cukai* and liability to *kerah*.[127] It was also conventional for land titles in the form of direct grants or deeds of gift to be conferred by the Sultan to members of the royal family, the *rajas*, and palace circles or *orang-orang keistimewaan*.[128] These were issued by way of concessions and chops[129] often times over areas undescribed or with vague boundaries. The recipients in turn issued their own chops[130] over areas within their concessions[131] and concluded mining or planting leases[132] or *pajaks* over a number of years to certain other individuals.

According to Shaharil, in the mid-nineteenth century peasants' right to land was acknowledged by the introduction of wooden seals which formed the early land titles. This was in addition to other prevailing documents in the forms of *cap keputusan* (in cases of disputes), *cap jual-beli* (in cases of sale) and *cap akuan* (in cases of original claims).[133] The Land Office which was established in 1912 based on the Johore model was weak and

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127 *Cukai* means tax.

128 As a distinct class of its own, *orang-orang keistimewaan* are royal favourites from among non-members of the royal families. In the class are included influential non-Malays including a Japanese physician, one Dr. Kondo. But the list does not include the *ulama* or religious scholars.

129 The first of such concessions, the *cap zuriat*, was issued by Sultan Zainal Abidin III on 30 July 1889 to his brother-in-law, Tengku Mohamed Yusof bin Sultan Mahmud over mining and planting areas in Tebak. The second concession, in the form of *cap kurnia* over 20,000 acres in Kemaman, was issued to one Chiah Ah Cham in September. Shaharil Talib, *After Its Own Image: The Trengganu Experience, 1881-1941*, Singapore: Oxford University Press, 1984, pp. 72-74. See Appendix 1.5. It was reported that on one single day alone (26 February, 1906), Sultan Zainal Abidin III issued five cap *zuriats* to his children covering an area of approximately 326,000 acres (p.79)... 5/6 of the total area of Kemaman district (p.88).

130 There are two types of cap *kurnias*: one is granted in perpetuity, heritable to the holder's heirs and without ground rent; the other is transferable to others outside the normal line of heirs. *Ibid.*, p. 116.

131 C.T.M. Husband, Chief Surveyor of Trengganu, claimed in his *A History of Land Laws and Land Administration, Trengganu, 1938* that concessions were also made through State Council resolution and issued by way of 'minute in a minute paper'. Das, *op. cit.*, p 13. But no further detail is available about this material.

132 See Appendix 1.6.

133 Shaharil, *op. cit.*, p. 32.

generally confined to the Trengganu river areas.[134]

The earliest land measures passed in Trengganu under British administration were two simple enactments, the *Settlement Enactment of 1924* and the *Land Enactment of 1926*. The 1924 enactment provided for the settlement of land, the placing of boundary marks and the issuance of permanent documents of title, while the 1926 enactment provided for the issuance of new titles to land previously granted by way of concessions. Both were repealed by the *Land Enactment of 1939* which provided for five types of titles:

(1) the *State Grant or State Lease*: for town or village land;

(2) the *Extract of Mukim Register* (EMR): for *mukim* land;[135]

(3) the *Grant Kecil or State Lease*: for country land below ten acres;

(4) the *Grant Besar or State Lease*: for country land exceeding ten acres; and

(5) the *State Lease* (not exceeding 20 years): for foreshore land.

The *Concessions Enactment (No. 3 of 1344)* passed in 1926 had earlier reaffirmed the Sultans's privilege to grant concessions to individuals with exclusive rights in perpetuity or over a limited period free from conditions of payment of rent or of cultivation. Although the *Enactment* provided for the right of the Sultan to resumption of the concessions, this was made subject to payment of compensation, to be determined by a Commissioner. The enactment also provided for leave for the holder of a concession to refer to a Court of Appeal in case of unsatisfactory compensation offered him.[136]

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134 It was under the exclusive control of the Commissioner of Lands, Tengku Chik Ahmad bin Tengku Abdul Rahman. After four years only 940 acres of mining and 1,540 acres of plantation leases were issued to a total of nine applicants. *Ibid.*, p. 103.

135 Section One of the *Land Enactment No. 3 of 1357* defined '*mukim* land' as "country land not exceeding ten acres in area other than land wholly or mainly planted or held under conditions allowing it to be planted with a commercial crop, the proprietor of which is a person belonging to any Malayan race who habitually speaks any Malayan language and professes the Muhammadan religion or who has obtained the special permission of the Sultan in Council to be registered as Proprietor of such land."

136 *ANM/T/PBB/2*: 'Trengganu Annual Report for the Year A.H. 1348 (8th June, 1929 to 27th May, 1930) by A.J. Sturrock, B.A. Trengganu, 1930.'

However, it restrained the *concessionaire* from any dealings while the case was being considered.

In Kedah, the earliest legislation was dated 1830 but no record of it still exists. From 1830 to 1912, there were about eighteen enactments passed, including a *Registration of Documents Enactment, 1310* (1890). The first *Land Enactment* passed in 1906 dealt with alienation and was strengthened in 1912 with provisions for dealings and registration. Under the 1912 amendment, lands which had been granted by the Sultan under a 1909 *Concessions Enactment* were to be converted into permanent titles. Five years later *Rules* providing for the collection of land revenue and the method of sale of land in arrears of rent were formulated. The 1912 enactment was repealed by a 1932 *Land Enactment (No. 56).*

Seven types of land entitlements existed between 1830 to 1932:

(1) the *Surat Putus Besar*:[137] issued to holders of town land and all country land exceeding fifty *relong*s;

(2) the *Surat Putus Kecil:*[138] issued to holders of country land of fifty *relong*s and below;

(3) the *Lease*: a holding or tenancy of land over a specific period of time, subject to conditions and payment of rent to the proprietor;

(4) the *Document*: any title of land registered prior to 29.3.1933 or title issued but not registered prior to that date;

(5) the *Surat Kecil:*[139] a provisional and incomplete title;

(6) the *Permit* or *Banchi Sewa*:[140] document evidencing ownership;

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137 Literally translated means 'main conclusive letter,' implying a large grant or a final and permanent title.

138 In contrast to the *Surat Putus Besar* above, it literally means 'minor conclusive letter,' implying a small grant or provisional title.

139 Literally means 'minor letter,' implying provisional or temporary occupation of land.

140 According to Das, *ibid.*, p. 478, *banchi [banci] sewa* literally means a census of squatters, i. e., recognition of an occupant's right to a title, to eventually issue in the form of *Surat Akuan* or *Surat*

(7) the *Surat Akuan*[141]: may be issued provisionally for a period of six months subject to extension if the occupier had proven good cause.

The 1932 enactment other than providing for means of overcoming overlapping claims of occupation by holders of Permit or *Banchi Sewa* and *Surat Akuan*, also provided for compensation for loss suffered by holders of *Surat Putus Besar* and *Surat Putus Kechil*,[142] thus ensuring indefeasibility of title. It also provided for administration of small estates and collection of land revenue. A 1951 amendment disallowed prescriptive rights in alienated land.[143]

True to customary tenure practices, land in Perlis was made available to anyone who applied for it through the *penghulu* who also measured the land. Other than that imposed on 'kampung' land, there appeared no cultivation condition attached to alienation except that a certain percentage of the produce had to be paid to the Raja as revenue. Surprisingly, even after the British takeover of the State in 1909, despite the much improved administration, with the deployment of more officers and surveyors, systematic training, and the formulation of new land legislations, revenue from land was said to have

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Putus Besar or *Surat Putus Kecil* as the proper registering authority may decide. According to Khoo Kay Jin in his 'Undang-undang Kedah Dengan Tumpuan Khusus Kepada Pengawalan Hak Milik Tanah' in *Masyarakat Melayu Abad Ke-19*, Jabatan Sejarah Universiti Kebangsaan Malaysia, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1991, pp. 56-86, *banci* is mentioned in the old *Undang-undang Kedah*, a copy of which text exists in *Jawi* (Malay-Arabic script) dated 1893. He emphasised the difference between *banci* (census) and *banci sewa* (census of lease or rent, i.e., as translated by Das, census of squatters) and, rightly pointed out that while *banci* is related to the determination of one's legal status in a population, *banci sewa* implies one's status with specific regard to occupation of land.

141 Literally means a letter of testimony or a certificate of recommendation. This implies forms of provisional approval for occupancy of land in expectation of title, known as Approved Application (the A.A.).

142 'Where a document evidencing ownership omits to describe, or describes insufficiently, the boundaries or situation of the land included therein so as to be practically unidentifiable and for three consecutive years the land has not been effectively occupied, such document of title is liable to cancellation upon repayment by the State of any premium or fees proved to have been paid by the owner, or in lieu thereof the Ruler in Council may alienate other land of approxiately equal area on payment of the difference between the premium and the fees payable and those already paid.' See Das, *ibid.*, p. 479.

143 Sihombing, *op.cit.*, 'Land Tenure,' p. 154.

never exceeded $30,000.[144] Even though the administration did not take any punitive action against non-payment of quit rent, illegal squatters on State land were convicted in Court.

Five types of titles existed in Perlis, namely:

(1) the *Large Grant*: for land exceeding 50 *relong*s in area;

(2) the *Lease*: for holding or tenancy of country land exceeding 50 *relong*s;

(3) the *Mukim Grant*: for country land below 50 *relong*s in area held under a register of *Milik*;[145]

(4) the *Old Grant*: old document of evidence which may be exchanged for large grant or *mukim* grant;

(5) the *Small Grant*: issued under the *Land Titles Enactment, 1341* (1922).

Das[146] noted that both large grants and leases were documents issued under the *Land Revenue Regulation of 1324* (1905), the *Land Revenue Act, 1326* (1907), the *Land Tenure Regulation, 1326* (1907) or any previous enactments. They also included documents of title issued prior to the commencement of the *Land Enactment, 1356* (1938). While the *1326 (1907) Regulation*, provided for alienation and demarcation of land subject to payment of survey fees, the *1356 (1938) Enactment* strengthened dealing procedures especially with regard to registration of instruments as well as ensuring indefeasibility of titles except in cases of fraud, forgery or insufficient and void instruments.

Under Rule 29 of the *Land Rule, 1356* exemption from payment of land rent was

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144 *ANM/SL26*: 'The Land Administration System in Perlis Before and After the Coming of the British'. This is an oral documentation by Haji Abdullah bin Ahmad on 24 July, 1971 recorded by the National Archive of Malaysia. From a Court clerk, Haji Abdullah who started his service in 1909 rose to become the Perlis Deputy Commissioner of Lands and Mines.

145 This is a register of approved application pending demarcation or survey. Nik Mohd Zain Haji Nik Yusof, 'Land Tenure and Law Reforms in Peninsular Malaysia,' a Ph.D. dissertation submitted to the University of Kent, 1989, p. 32.

146 *Op. cit.*, p. 478.

granted to members of the Ruling House, *Penghulus* and *Orang Anam*[147] of *mukims*, the great grandchildren of *Rajas* or the wife or widow of a member of the Ruling House[148] and Heads of Government departments so long as they held office.

In the absence of land registers, application for occupation of land in Kelantan can be approved by *Penggawas*, assisted by the *Imam*,[149] on behalf of the Sultan, subject to payment of fee and tax on produce. But from 1881 (1299H) onwards due emphasis was given by the Sultan himself to aspects of land registration.[150] A system of registration of mutations in title was in force which recognised the ownership of or entitlement to land of the 'registered party.' But the Land Office was only established at the command of Sultan Mansur in 1896 (1314H) to facilitate the keeping of registers and the issue of title deeds to implement the regulations.[151] This enabled a landholder who had conventionally acquired land by purchase from the *Penghulu* or the Ruler to register it at the Land Office

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147 The word '*anam*' could be a misspelt version of '*enam*' meaning six. '*Orang enam*' or 'men of six' is a reference to palace appointed ceremonial chiefs of the *mukims* as is the case with Perak's '*Orang Besar Empat*' (the Four Grand Chamberlains), '*Orang Besar Lapan*' (the Eight Grand Chamberlains), '*Orang Besar Enambelas*' (the Sixteen [Grand] Chamberlains) and '*Orang Besar Tigapuluhdua*' (the thirty-two [Grand] Chamberlains), all of which refer to hierarchical ceremonial chieftainship. Being merely ceremonial chiefs of the *mukims* whose listed positions are preceded by the *Penghulus*, the '*orang anam*' of Perlis could be relatively insignificant as compared to the positions, roles and influence of the '*Orang Besar Jajahan*' (Territorial Chiefs) of Perak and Pahang whose position in the official ceremonial hierarchy not only preceded that of the *Penghulus* but also the District Officers.

148 So long as they had not remarried.

149 Tengku Elias bin Tengku Mahmood, *Panduan Pentadbiran Tanah No. 4:* 'Latarbelakang Pentadbiran Tanah Negeri Kelantan,' Kota Bharu: Pejabat Pengarah Tanah dan Galian, Kelantan, 1986, p. 4. *Penggawa*, in Kelantan, is the equivalent of *Penghulus* in other Malay States whereas the title *Penghulu* in the same state denotes a village headman (which in other states are known as *Tok Ketua, Ketua Kampung, Tok Sidang, Tok Empat*, etc.). *Tok Kweng* is the Siamese-originated title for a Penggawa.

150 J.H. Beaglehole, *The District: A Study in Decentralization in West Malaysia*, London: Oxford University Press, 1976, p. 11.

151 The first head of the Kota Bharu Land Office was one Haji Che Wok, a Kelantanese trained in Johore. Tengku Elias bin Tengku Mahmood, *op. cit.* The Land Office became a strategic institution in the power struggle betwen the Sultan and his chiefs. In the struggle, the Sultan failed in his attempt at centralizing the land register. Instead, the chiefs managed to take control of and head the Land Office, and were able to issue titles and increase their holdings. Clive S. Kessler, *Islam and Politics in A Malay State - Kelantan 1838 - 1969*, Ithaca: Cornell University Press, 1978, p. 64.

and obtain proof of his title. This was further strengthened by the setting up in 1900 (1317H) of a Commission which oversaw the compulsory issue of indisputable[152] deeds to all landholders. But imperfect survey undertaken by unskilled 'land measurers' provided insufficient proof of ownerships, thus causing difficulties in the acceptance by the Commission itself of their validity.[153]

In 1907 rice tax was still measured based on the rate of yield per *penjuru* (400 sq. *depa*s) cultivated. After the appointment of R.A. Crawfurd as the Director of Works and Survey, British officials in 1911 decided to introduce an enactment which would facilitate the issue of land titles based on survey and replace the tax on produce by a fixed land rent. The new regulation was scheduled to take effect from 1 January, 1915 with the coming into force of a *1914 Land Rules* replacing the *Hasil Nyior [Coconut Revenue] Regulation*, and the *Hasil Padi [Paddy Revenue] Regulation, of 1905*.[154] Land measuring more than ten acres were issued with provisional titles of up to 999 years but resumable by government whereas those below the size were issued with a *Kweng* extract (*mukim* extract) with permits issued pending survey. This resulted in land acquired before 1915 previously described by boundaries being upgraded to reference by survey. Prompted by a rebellion in Pasir Putih in 1915,[155] survey procedures were further simplified to facilitate the collection of land taxes. Survey of the northern plain of the State was completed in 1922 resulting in a four-fold increase in land revenue from $102,656 in 1910 to $442,473 in 1926.[156]

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152 Sihombing, *op. cit*, 'Land Tenure,' p. 154.

153 The traditional '*pedepa adat*' was introduced as a standardised measurement (approximately 5 feet and 9 3/4 inches). Measurements with a rough sketch on grants were made by two land measurers assisted by the *Imam*. *ANM/P/JU/D1*: 'History of Land Measurement and Survey in Kelantan, 1936.'

154 Just as in the *Hasil Nyior Regulation*, there were specific penalty clauses under the *Hasil Paddi Regulation* for recovery of tax arrears, including imprisonment of not exceeding two months or a fine not exceeding $50.00 or both for the defiant defaulters. *ANM/D/PU1*: 'A Regulation to Provide for the Better Assessment and Collection of Hasil Padi, 1905.'

155 Refer to Chapter Two of the present study.

156 Beaglehole, J.H., ***The District: A Study in Decentralization in West Malaysia***. London: Oxford University Press, 1976, p. 11.

In terms of land proprietorship, prior to the passing of the *Kelantan Land Enactment of 1926* titles to land were issued in the forms of grants, leases of State lands, and extracts of *mukim* registers. Previous other documents of titles were also recognised. To safeguard the interests of the local population lands could only be disposed of to a non-native of Kelantan[157] with the consent of the Sultan. But even with the passing of the 1926 enactment, validity of registration of dealings still did not imply real indefeasibility of title until further enactments were introduced a few years later. But whereas by 1915 only 39,727 lots (22,742 acres) had been surveyed, six years later, the figures had shot up to 317,528 lots (339,964 acres).[158]

Under *Enactment No. 3 of 1930* all dealings were required to be concluded in writing, failing which no suit could be brought to Court. Eight years later the legislation was strengthened by another enactment[159] which helped streamline it with the uniform enactment of the Torrens system already in force in the Federated Malay States. The *1938 Enactment*, which provided for the prevention of excessive fragmentation of country land and ensured the realisation of all arrears of land rent by the proprietor prior to any further dealings in the land, however, failed to observe the required precise survey procedures.

Johore, on the other hand, was considered unique among the Malay States "in that it was the first to adopt the practice of keeping written records for grants of authority."[160] Land in the state had as early as 1879 been alienated in large tracts to Europeans for use

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157 Section 9 of the *Kelantan Land Enactment* (no. 26) of 1938 defined 'native of Kelantan' as:

(a) any person born in Kelantan whose father was a Malay;
(b) any person born in Kelantan whose mother was a Malay and whose father was a Muslim;
(c) any person wherever born whose father was a Malay in Kelantan;
(d) any person wherever born both of whose parents were Malays and who has resided at least 15 years in Kelantan; or
(e) any person who was born in Kelantan and whose father was also born in Kelantan.

158 *ANM/P/JU/D1, op. cit.* The prevalence of verbal transactions and peasants refusal to register them in land offices were still widely reported.

159 No. 26.

160 Carl A. Trocki, 'The Johore Archives and the Kangchu System 1844 - 1910,' *JMBRAS*, pp. 1-46, Vol. 48 Pt. 1 (No. 227), May, 1975.

as plantations, subject to payment of premium and quit rent. Whilst some of these tracts were leased for 99 years, town land around Johore Bahru was alienated in perpetuity under few restrictions, including exemption from quit rent and cultivation clause.

Other than the practice of Malay customary tenure, land was also disposed of to Chinese settlers and immigrants by way of the *Surat Sungai.*[161] Though alienation by way of a permit to cultivate was meant to facilitate the growth of the pepper and gambier industry in the state, it also resulted in the offshoot of the *Kangchu system,*[162] a unique institution peculiar to the state which involved the authorised appointment of Chinese captains over particular settlements.[163]

Another form of permit to occupy and cultivate land, issued prior to 1910, was the *Surat Sementara*[164] which resembled occupation in anticipation of a title. Though short of a title, the holder of *Surat Sementara* was, however, allowed to enter into and register dealings with the approval of the Collector of Land Revenue. Distinct from the *Daftar Permohonan*[165] or Approved Application, title would be issued to the *Surat Sementara* holder upon his paying the survey fees and annual quit rent while proving to the

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161 Literally means "river letter." Also alternatively known as the "*surat keterangan sungai*" or the "river document." See Appendix 1.7 for samples of *Surat Sungai*. The first *Surat Sungai* was believed to have been issued as early as in 1833. *ANM/J/PU1*: 'Undang-undang Kangchu, 1873'. According to Trocki, *ibid.*, within the period from 1844 to 1908 a total of 251 river grants were made by the State Government.

162 In brief, the system is based on a letter issued by the ruler of Johore in September 1867 to leaders (the Kangchus) of Chinese settlers authorising the opening up of tracts of land on river banks as plantations for the cultivation of pepper and gambier. Together with the authorisation, the *Kangchus* were made responsible for the proper management of internal affairs and well-being of their subordinate workers as well as for ensuring continuous production of high quality yields. At least until 1910 when rubber began to replace pepper, the system proved succesful for not only did the industry contribute to Johore's economic growth, but the arrangements reached with the *Kangchus* had also avoided factional clashes and rivalries common among Chinese immigrants elsewhere in the Malay States. See Caroline Wong May Leng, *Sistem Kangcu di Johor 1844-1917*, Kuala Lumpur: Persatuan Muzium Malaysia, 1992.

163 See Appendix 1.8.

164 Literally, 'Temporary or Provisional Letter' thus implying interim permission while permanency was being considered.

165 Literally, register of applications.

satisfaction of the Collector that the land was well cultivated.

In 1910 a general enactment very similar to that of the Federated Malay States' was passed. The *Johore Land Enactment No. 1, inter alia*, formalised alienation subject to certain conditions, including the payment of rent, and regularised dealings under specific rules, including a requirement that dealings affecting country land be entered in a journal. Other than dividing land into three classes[166] the enactment, amended a number of times, also incorporated provisions for caveats, transmissions of land and collection of revenue.

Towards the National Land Code and Beyond.

The *National Land Code*[167] which finally came into effect from 1 January 1966 owed its origin to almost two centuries of land legislations. After the Penang debacle as described by Phillips in his 'Minute' of 1823, the Young Report of 1837 resulted in the formulation and introduction into the Straits Settlements of the *Straits Land Act of 1839*. After the Perak and Selangor *Regulations* of the late 1870's and partly arising from his *Annual Report*s and special *Memorandum,* Maxwell[168] initiated systematic legislations which took off in the 1880's. His attempts[169] at addressing land administration issues of the day were underlined by his deep conviction of the merits of the Torrens system.

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166 Sihombing, *op. cit.,* p. 152. Land was divided into:
(a) town and country lands,
(b) country lands of 100 acres and below, and
(c) country lands exceeding 100 acres.

167 Act 56 of 1965.

168 In his capacities as a British Resident to Perak, a Commissioner of Lands Titles of the Straits Settlements and later the Straits Settlements Colonial Secretary.

169 Maxwell's paper on the 'Present and Future Land Systems, 1883' was cited by Das, *op.cit.*, p. 63; *ANM/P/PTG*: 'The Torrens System of Conveyancing By Registration of Title: April 5, 1883;' *ANM/P/PTG1*: 'Proposals on the Introduction of the Torrens System in the Straits Settlements 1883;' *ANM/SS7*: 'Report on the Procedure Which is Being Employed to Reorganize the Land Revenue Administration in Penang: 21 June 1886;' *ANM/SS7*: 'Memorandum on the Revenue Liability of Landholders in the Straits Settlements: 1891.' [Note: The present researcher managed to locate and confirm in August 1994 the existence in the Perak Museum of the first document cited by Das above, but unfortunately, was unable to refer to it as the museum authority had earlier in April sent it to the National Museum, Kuala Lumpur for further restoration and re-binding].

As far as the FMS was concerned, *Cap. 138* remained in force until it was repealed and replaced in 1965. In spite of thorough amendments proposed by a Committee of Enquiry,[170] no substantial amendments were made to it.[171] The Committee strongly advocated the retention of the post of the Commissioner of Lands and objected to the transfer of his duties to the Residents and the Legal Advisors arguing that "...in view of decentralization...the need for such a post was all the more necessary...to ensure that the *Land Code* [Cap. 138]...a Federal Enactment...be administered in a manner conducive to uniformity throughout the Federated Malay States..."[172] Rather than totally abolishing the post, the Committee went to the extent of proposing a compromise that the post of Registrar-General be created in Kuala Lumpur whose duties included being the officer in-charge of registry titles in Selangor.

With the formation of the Federation of Malaya in 1948, uniformity of law became more urgent. At the request of the new Federation, the Crown Colony of Singapore and the United Kingdom, a mission headed by Sir Louis Chick was organized with the assistance of the International Bank for Reconstruction and Development. The report of the *Chick Mission* submitted in June 1955[173] urged the unification of land legislation throughout the federation in place of the deeds system in operation in Singapore and Penang whilst recognising the potential of special circumstances arising out of Malacca and Negri Sembilan. Introduction of a Federal Land Code was recommended as soon as circumstances with regard to land legislations and policies in the Malay States and the

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170 Comprising of H.C. Willan, Arthur Sleep and W.G.W. Hastings, this committee, set up in 1936 largely in response to an agreement reached at the Conference of Residents in 1934 and circulated to all member states to abolish the post the Commissioner of Lands of the Federated Malay States, met not less than 21 times from October 1935 to May 1936 to discuss wide-ranging issues. *ANM/2483/1932*: 'From Ag. Under Secretary, FMS to Secretary to Resident, Pahang: 11 April, 1934;' *ANM/D.O. Lipis 465/34*: 'Abolition of the Appointment of Commissioner of Lands, FMS and Reference to the Resident and Legal Adviser under the Land Code, 1926.'; *ANM/P/PTG2*: 'FMS Report of the Committee Appointed to Advise What Amenmdments are Necessary to the Land Code, 1936.'

171 Sihombing, *ibid.*, p. 27.

172 *ANM/P/PTG, op. cit.*.

173 Entitled '*Report on the Economic Development of Malaya*,' Washington: 1955. See also Das, *op. cit.*, pp. 75-77.

Straits Settlements would permit.

The *Report,* which disclosed grave defects in post-war land administration in the Malay States primarily in relation to arrears of work in land offices, attributed the losses and inefficiencies to interventions of war and the emergency, the deployment of senior officers for [the Emergency] resettlement work, and the understaffing of administrative support services.

Short of proposing any radical change in the substantive land laws, the *Report* called for more vigilance to be exercised by the authorities to prevent illegal occupation of land, and for restriction on minute sub-division and fragmentation of country lands, and blamed the delay in the issue of titles on a cumbrous procedure involving 'no less than 107 operations.' It also claimed that Malay reservations had caused limitations on the landowner obtaining credit and had contributed to deflation in the market value of land. To improve land administration in the country, the *Report*, whilst disapproving the proposed abolition of the Land Training School, hoped that a specialised cadre of Land and Survey Officers would be made readily available and suggested the setting up of a specialised Land Services Department.

In Penang, a five-man *Oldham Committee*[174] was appointed in October, 1953 to consider the introduction of a system of Registration of Land Titles into the state. The Committee, apparently unaware of the recommendations made by the Chick Mission,[175] submitted a 55-page report on 9 March, 1955. Just as observed by the Chick Mission, the Committee highlighted the peculiar defects in Penang, Singapore and Malacca, and noted

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174 The committee consisted of the Collector of Land Revenue, Penang (Chairman), two legal practitioners, the Chief Surveyor of Penang, and the Building Surveyor, Municipality of Georgetown. Its terms of reference were:

(a) to ascertain the defects in the [then] present system of registration,

(b) to ascertain to what extent such defects could be remedied by the introduction of a system of registration of title, and

(c) to make recommendations regarding a system of registration of title suitable for introduction into the state of Penang.

175 Das, *op.cit.*, pp. 77-78.

that the desired degree of correlation between the Survey office and the Registry of Deeds had not been achieved under the system then prevailing. It further noted that in both Penang and Malacca, the registration of conveyance did not, of itself, convey or establish any legal title to land nor was it deemed to corroborate, qualify or ban any rights despite the fact that to effect a conveyance a trained solicitor is required to trace and examine documents 'for a period of forty years back or back to a grant or lease by the East India Company or the Crown, whichever period is shorter' in order to prove a title.[176]

Having enumerated general defects[177] of the system, the Committee, though it unanimously desired to introduce a system of registration of titles to Penang, felt that it could not be done under the rigid provisions of *Cap. 138*.[178] The *English Land Registrations*, 1925 to 1936, and the rules under them were deemed the logical model for Penang to follow provided, at the same time, the basic conveyancing law were amended accordingly. Interestingly, no steps were taken to implement the Committee's recommendations.[179]

Following Penang, shortly before Independence, the Minister for Natural Resources and Local Government on 1 February, 1957 appointed a *Commission on Land*

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176 *ANM/P/PTG3*: 'Summary of Differences Between the Former Land Laws of the Straits Settlements and the Federated Malay States,' p.6.

177 Such as the necessity for repeated investigations of file, the cost of the investigations, the risk of paying good money for a bad title, and the lack of a single Certificate of Title which can be produced whenever required.

178 For whereas *Cap. 138* dealt mainly with unalienated land, in Penang most land had been alienated and, whilst *Cap. 138* could give no recognition to Common Law freehold tenures, the rights of ownership of land, under the said Common Law could not be reduced to a restricted grant. In addition to *Cap. 138* not having provision for bringing land already under grant or lease to register except at times of alienation, other details and aspects of *Cap. 138* were also considered as not sufficiently elastic to conform to conveyancing practice at Penang.

179 Das, *op.cit.*, p. 79. suspected that it was presumably because by Article 76(4) of the Constitution of the Federation the initiative was then left to the Federal legislature to enact "for the purpose only of ensuring uniformity of law and policy to make laws with respect to land tenure, registration of titles and deeds relating to land etc." Events leading to the Federation of 1957 and the existence of the Chick Mission to oversee the needs of a Federal legislation must have also come to the notice of the Oldham Committee at that point of time.

Administration[180] whose two-pronged tasks were: to enquire into the state of land administration in the country and recommend improvement, including if necessary, alteration to the land laws, and to establish the reasons for arrears of work in the land office and recommend solutions.[181]

The Payne *Land Administration Commission* stated that its purpose was to report clearly "how [land administration] has got into its present most unsatisfactory position"[182] and to prepare for Malaya's future. Similar to what was found by the earlier *Chick Mission*, the report of the Commission also cited war, the Japanese occupation and the emergency as the probable causes of the existing situation. It claimed that land administration had suffered woefully; from being the principal activity of the District Officer, land administration became priority number seven or second last, thus causing arrears of work and lack of interest in it. In addition, the bulk of survey work was deployed to New Villages,[183] an incidental by-product of the Emergency.

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180 Chaired by Payne, a Barrister-at-Law then President of the Land Court of Queensland, Australia. He was assisted by C.N. Chandra from India, also a Barrister-at-Law, and A.P. Mitchell, formerly the Director of Lands and Surveys and Commissioner of Mines, Uganda. Secretary of the Commission was W.D. Edmonds, an officer in the Malayan Civil Service.

181 The actual Terms of Reference were:

(a) to enquire into the present state of land administration in the Federation of Malaya,

(b) to establish the reasons for the present position in relation to arrears of work in Land Offices,

(c) to make recommendations considered necessary for the improvement of land administration including, if necessary, alteration to the Land Laws, and

(d) to make recommendations for the solution of the problem of arrears of work in Land offices.

182 *Report of the Land Administration Commission*, Kuala Lumpur: The Government Printers, 1958, para 8.

183 Of significance of the period of Emergency (1948-1960) to land administration was the temporary resettlement of Chinese communities from the jungle fringes into 'New Villages' devised under the 'Briggs Plan' to circumvent logistical supplies to the Communists. According to Hamzah Sendut, 'Rasah - A Resettlement Village in Malaya', *Asian Survey*, Vol. 1, No. 9, November, 1961, pp. 21-26, about 400 resettlement villages were created by the Emergency (p. 21). Gayl D. Ness in her *Bureaucracy and Rural Development in Malaysia - A Study of Complex Organisation in Stimulating Economic Development in New States*, Los Angeles: University of California Press, 1967, estimated the number of such New Villages at 500 (p. 53) each with a population of between 1,000 to 10,000 people, whereas writing a year later, Allen (*op.cit.*, p. 96) put the number at 600 villages. Given that population grows and settlements expand it is difficult to comprehend how fourteen years later, Andaya (*op. cit.*, p. 260) arrived at an estimated figure of only 400 villages and

To partly overcome the problems, the Commission stressed the need for clear land utilisation policy and the need for sufficient financial provision and due recognition for land administration work. It noted that direct revenue derived by the States and the settlements from land premia and rents were not nearly as substantial as they should have been under effective administration. Although its members differed on the issue of separate land administration, they were unanimous that "the District Officer should not be allowed to delegate land office administration..." Given the prevailing situation, "...the better plan would be to make the senior assistant District Officer the officer-in-charge of land administration, but he would [have to] be relieved entirely of all other duties..."[184]

The Commission emphasised the need for the tightening of discipline and supervision, recommended the appointment of a State Director of Land and Mines with wide powers and authority, and pointed out that the existence of temporary occupation licences deprived the States of greater revenue and premia. It also called on the State authorities to look into the specific issue of quit rents.

In spite of the complications caused by the Penang and the Malacca land problems, both States finally prepared themselves to come under a uniform land code by the passing in Parliament of the *National Land Code (Penang and Malacca Titles) Act, 1963*.[185] On 9 August 1965, the National Land Code Bill was finally tabled in Parliament by the

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a population of 400,000. Though the plan had served its purpose, their transformation into newly-styled permanent settlements raised a number of socio-political issues. To quote Ness, *op.cit.*, p. 99, "...by 1952 the resettlement...had progressed sufficiently to become a powerful racial issue in the debate on rural development...loyal Malays who were rising up in force to fight the Communists insurgents were being neglected in their *kampung*s [villages]..." See also reflections of the problems as contained in a six-page report submitted to the Government. *ANM/MISC.15*: 'Report of Committee Appointed by His Excellency the High Commissioner to Investigate the Squatter Problem,' 1 October, 1949.

184 *Ibid.*, para 113.

185 Which partly provided for the creation of an Interim Register of land titles and spelt out its *modus operandi* for a smooth transition towards the *National Land Code*. In a separate development, in July, 1964 the Penang State Director of Lands and Mines, despite admitting the non-availability of State land to be offered to the landless for agricultural purposes was able to report on a generally satistactory state of affairs in the state land administration, including a 96% success in quit rent collection. *ANM/W/PTG1*: 'Report on the State of Land Administration, 1963 by Mohamed Nor Zabidin, Pengarah Tanah dan Galian, Pulau Pinang, on 9 July, 1964.'

Minister of Lands and Mines. In his words, the achievement of the *National Land Code* would be twofold, that it:

(1) established a uniform clear-cut system of land tenure and dealing in place of a confusion of systems, and

(2) incorporated all those new provisions required to adapt that system to the social and economic changes of half a century or more.[186]

Other Related Legislations.

Apart from the *Cap. 138* as principal legislation in the FMS, British administration had in 1913 introduced an enactment "to provide for securing to Malays their interests in land" in the form of the *Malay Reservations Enactment*.[187] This came about as rapid land development under new economic conditions gave a cause for concern among a number of the administrators that "the Malays (Perak and foreign) have been gradually pushed out of the lands they long occupied and their condition...[had become]...unbearable."[188]

Given the fact that the measures were initiated during the period of the first rubber boom in 1905 and the rapid rise in rubber prices in 1910, whatever was the real motive of

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186 Sihombing, *National Land Code: A Commentary*, Kuala Lumpur, Malayan Law Journal Pte. Ltd., 1981, p.22-23.

187 Promulgated as the *Malay Reservations Enactment* (No. 15 of 1913) and enforced with effect from 1.1.1914, the enactment was repealed and replaced by the *Malay Reservations Enactment Cap. 142* (originally No. 30 of 1933 and amended by Enactments No. 8 of 1934, No. 28 of 1936, No. 51 of 1936 and No. 3 of 1938). Separate enactments were introduced in the Unfederated Malay States, namely, The *Malay Reservations Enactments* of 1930 (Kelantan), of No. 63 of 1931 (Kedah), of No. 7 of 1353 (1935) (Perlis), of 1936 (Johore) and of No. 17 of 1360 (1941) (Terengganu). Several amendments took place following the various stages of constitutional developments of the Malay States. Unlike Malacca and Penang which were without such enactment, *Cap. 142* also became applicable in the Federal Territory of Kuala Lumpur being previously part of the State of Selangor.

188 Gullick, J.M., *Rulers and Residents: Influence and Power in the Malay States 1870 - 1920*, Singapore: Oxford University Press, 1992, p. 200 as cited from the Resident's *Annual Report Perak 1906*, para 10. Even though the report was in reference to the situation in Kampar, Perak, it nevertheless reflected the same trends elsewhere. Among the prominent British administrators who in 1905 started the debate on the need for some kinds of restrictions on the sale of Malays land were R.J.B. Clayton, a District Officer in Selangor and Ernest W. Birch, the Resident of Perak. As the leading expert on the F.M.S. land system of the time, Birch, together with H. Conway Belfield, then Resident of Selangor, became the key formulators of the Malay Reservations policy.

the early Government soon became suspect for most of the areas designated for Malay reservation were generally found situated far from town areas and roadsides,[189] and lands already owned or charged to foreigners were not to be included in the subsequent proposed reservation.[190] Further more, the legislation did not prohibit non-Malays from purchasing other land held by Malays except 'kampung' land.[191] In this respect, even strategically located land owned by Malay smallholders continued to fall prey to rubber planters, speculators and money lenders who were prepared to pay high prices to secure them. In the end, however, in contrast to virtual European absolute control over rubber and tin, not only were the Malays deprived of the right to plant rubber, but even the Chinese and the Indians planters were effectively marginalised.[192]

With regard to prohibitions on dealings, Wong generally viewed the 1913 enactment and its subsequent amendments as "indiscriminative...(in its) nature and purposes." This is alleged to have caused the Malays to lose from limited credit facilities, restrictions on transfers, deflation in market value[193] of the lands, and discouragement of

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189 Ahmad Nazri Abdullah, *Melayu dan Tanah*, Kuala Lumpur: Media Intelek Sdn. Bhd., 1985; Lim Teck Ghee, *Peasants and Their Agricultural Economy in Colonial Malaya, 1874-1941*, Kuala Lumpur: Oxford University Press, 1977, pp. 103-138. See also Gullick, *op. cit.*, 'Rulers and Residents;' Wong, *op. cit.*, pp. 509-512.

190 Instruction of A.E. Coope, the Commissioner of Lands and Mines Johore, to the Collector of Land Revenue Johore Bahru in 1935. *ANM/J/PTJB2(CLR 269/35) 1935*: 'Proposed Malay Reservation Enactment.'

191 During the rubber boom years in the 1920s, the government introduced the Stevenson Rubber Restriction Scheme which aimed at controlling rubber production. The government's motives for this were suspect, for in addition to the quota imposed on rubber production, by means of 'restrictive conditions' imposed on land titles, Malays generally were deprived of planting rubber which was economically more lucrative. Specific instruction in February 1928, by J.V. Cowgill, then Acting Commissioner of Lands, FMS, for Collectors of Land Revenue to check their Mukim Registers and take action for breach of condition against those planting rubber on non-rubber land, is a testimony to such deprivation. *ANM/P/PTG7*: 'Commissioner of Lands Circular, 1928-1932.'

192 According to John G. Butcher, *The British Rule in Malaya, 1880 - 1941*. Kuala Lumpur: Oxford University Press, 1979, p. 14, in 1913 Europeans owned three-fifths of rubber estates, and almost twenty years later a 1932 survey showed that they owned 296 out of 308 such estates, the remaining 12 being Chinese-owned. See Appendix 1.9 for the 1933-34 statistics.

193 It is only when it comes to compulsory acquisition under the *Land Acquisition Act, 1960* that land in a Malay Reserve is valued at par with other lands and the compensation awarded for the acquisition thereto is based on open market value.

mining industries from prospecting in Malay reservation land. Citing the policy of reserving huge areas of land for alienation to Malays only as having impeded development, Wong felt that the problem pertained "more to a matter of flexibility in the implementation of policy than to a question of legal rigidity."[194]

Further amendments were made to the enactments. Among the most important was the provision made in 1933 which exempt from restrictions land within a Malay Reservation so long as it is not held by a Malay. In 1954 provisions were introduced to enable some flexibility of charge of a Malay Reserve land and in 1985 another amendment took place which redefined the status of a Malay holding company when the majority shares are not held by Malays.

Other related legislations took place in line with the pace of development of the country. In addition to State *Land Rules* introduced, revised and amended to complement the *Cap. 138* in streamlining procedures for land alienation, registration, dealings and collection of revenues, new measures were developed and introduced in response to reports and memorandum prepared by individuals, committees and commissions. These were attempts toward achieving uniformity of land legislation and addressing changing demands of land development and planning, as well as safeguarding the environment and ensuring land conservation.[195]

For over 170 years,[196] from the first British occupation of Penang to the independence of Malaya, various modes of land administration systems and legislations

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194 Wong, *op.cit.*, p. 11.

195 Among the main legislations complementary to the *National Land Code*, Act 56 of 1965 (after this the *Code*) were the *Small Estate (Distribution) Act*, 1960 - Laws of Malaysia 98; the *Land (Group Settlement Areas) Act*, 13/1960; the *Land Acquisition Act*, 34/1960; the *Land Conservation Act 1960* (Act 385); the *Road, Drainage and Building Act 1974*, (Act 133); the *Environment and Quality Act 1974* (Act 127); the *Town and Country Planning Act* 1976- Laws of Malaysia Act 172; *the Property Gains Tax, 1976* (Act 169), the *Strata Titles Act* 19845 and the *Uniform Building By-Laws*, 1985.

196 Being 170 years in Penang (1786-1957), 150 years in Malacca (1795-1818 and 1824-1957), 140 years in Singapore (1819-1963) and between 50-80 years in other parts of the Malay States (the Federated Malay States from 1874 to 1957 and the Unfederated Malay States from 1909 to 1957).

were attempted in the various parts of the Federation of Malaysia. It was pretty obvious that for the first hundred years of British occupation of the Straits Settlements they disposed off lands without more clearly defined purpose other than attempting to meet the needs and convenience of a Company's commercial enterprise turned Colonialist political venture.[197]

Isolated and piecemeal measures not only were obviously inadequate but further complicated matters. Often times seemingly genuine measures at improvement were thwarted by either the lack of proper instructions and supporting staff, the absence of expertise in the field of survey, and the low priority given to land administration as a whole. By the close of the first century, though population increased, land revenue still remained an issue. The scenario betrays the shortcomings of an administration in the wake of rapid development triggered by its own nation-building mission.

The look of things began to change at the turn of the second century of the British occupation. Land legislations of the period from 1886 to 1948 showed more systematic and purposeful engineerings. From policy formulations and legislations dictated by the urgency of socio-political change and economic exigencies dependent upon the strength of personalities of administrators especially the Residents, in whose hands, lay "all political and executive powers,"[198] there evolved new legal institutions, systems and procedures such as the Deeds System, and, the Torrens Systems which culminated in the uniformity of law for the entire Federation of Malaysia as represented by the *National Land Code* at the dawn of 1966.

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197 The fact that the colonies existed to serve the interests of the British empire is amplified by D.B. Swinfen, *Imperial Control of Colonial Legislation 1813-1865: A Study of British Policy Towards Colonial Legislative Powers*, Oxford: Clarendon Press, 1970, when he concluded that '...the colonies existed simply in order to benefit the mother country by supplying her with raw materials, accepting her products, and encouraging mercantile marine...', p. 106. C.K. Meek, *op. cit.*, p. 40, in restrospection, however, regretted the failure of the land system in the Federated Malay States to develop 'along the lines originally projected...that there should [have been] two types of title, (a) one suited to European and commercial interests, and (b) the other suited to native occupiers...'

198 Wong, *op.cit.*, p.5.

CHAPTER TWO

THE MALAY CUSTOMARY LAND TENURE AND ITS ENCOUNTER WITH THE COLONIAL ADMINISTRATIVE SYSTEMS.

The Malay Adat.

Adat to the Malays is not merely customary practices, the rules of etiquette or the conventions of society. It is the summation of all those and more, for it also implies the application of the common sense and normative behaviour of the people or the *adat kampung*.[1] To wrongly perceive or equate the Malay *adat* in the light of other 'primitive' or 'tribal' laws and practices with its debased connotations would be totally unjustified.[2]

Closer observation will show that depending on the context of its everyday usage, to the Malays, 'c*adat* as a rule of propriety, courtesy[3] or the 'right procedure or way of doing things',[4] may, at different times or occassions mean[5]

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1 Literally, village normative behaviour.

2 In his *Adat Law in Indonesia* (New York: Institute of Pacific Relations,1948), Ter Haar, p. 4, emphasized that the term *adat* had no fitting English equivalent. He thought it not justified in fact to translate the term into 'customary law' for that would be 'clumsy' and implied a difference in kind from the law of civilised people. Though 'native law' seemed adequate, he still thought that 'native' carried overtones of colonial snobbishness and was distasteful and to translate them into 'primitive law' would invite unfortunate connotations for "to call 'primitive' a people with a literate intelligentsia and official class...would be an error." Alluding to customary laws in Africa in general, Max Gluckman, *Ideas and Procedures in African Customary Law*, London: Oxford University Press, 1969, p.5, observed that they [the customary laws] were something felt embedded in the usages and customs of the people and were mostly not enunciated in authoritative texts or written codes 'save where Islam prevailed.' See also A.E.W. Park, *The Sources of Nigerian Law*, London: Sweet and Maxwell, 1963, who, apart from admitting it a misfit to categorise Islamic law under 'tribal law', and therefore, includes the former under 'customary laws,' also acknowledged that 'Islamic law unlike tribal law, is not grounded in any particular locality and may operate in areas even where it has not displaced the tribal law.' (p. 130).

3 Moshe Yegar, *Islam and Islamic Institutions in British Malaya*, Jerusalem: The Magnes Press, 1979, p. 121.

4 R.J. Wilkinson, 'Malay Law' in R..J. Wilkinson, *Papers on Malay Subjects*, Law, Part 1 (1908) pp. 1-45, (reprinted in 1971) edited and introduced by P.L. Burns, Oxford University Press, Kuala Lumpur. In his account of the *adat perpatih*, the *adat temenggong* and the *hukum shara*c' as the three forms of Malay laws, Wilkinson found the *adat perpatih* to have the closer resemblance to

'(i) manners - etiquette;

(ii) proper, in the sense of correct;

(iii) the natural order;[6]

(iv) law, in the sense of rules of law;

(v) law, in the sense of concept of law.'[7]

Since custom naturally experiences dynamic changes within itself and in its interaction with other external influences it becomes increasingly impossible for any one society to pin-point to any particular aspect of its custom and to claim the copyright to its originality. Often times they are the products of universal heritage despite the traceability to some cultural or religious traditions of certain customary practices. It is only natural that in the process of cultural assimilation some aspects of a custom are selected and prevail as distinct features while others are passed down the ages as mere inherited rituals. This partly explains the prevalence in the past or even at present of certain practices seemingly contradictory to Islam in Malay society.[8] As Ahmad Ibrahim puts it,

> "...Islamic law has attempted to absorb as much of the customary law as is compatible with the teachings of Islam, and the result is the *adat*, which should rightly be used only for that part of the Malay customary law which has been

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English law.

5 M.B. Hooker, *The Personal Laws of Malaysia*, Kuala Lumpur: Oxford University Press, 1976, p. 62. See also his *Readings in Malay Adat Laws*, (ed.), Singapore: Singapore University Press, 1970. To the *adat perpatih* community, the definition of *adat* is both more specific and elaborate.

6 Examples given for this definition are that of rivers running downhill and the sun rising in the east and setting in the wast.

7 The example given to amplify this sense of adat which is related to the third definition, is that it is *adat* that law and religion complement each other and do not clash.

8 One such case is the practice of reciting the 'chiri' at the Courts of the Malay rulers of Brunei and Perak on the occassion of the installation of chiefs, as recounted by W.E. Maxwell in 'An Account of the Malay *Chiri*: a Sanskrit Formula', pp. 80-101, *Journal of the Royal Asiatic Society of Great Britain and Ireland*, Vol. XIII, Pt. 1, January 1881, The Sanskrit mystic formula was supposed to have a binding effect of an oath between a candidate for an office and the reigning Sultan who appointed him. But Maxwell also emphasized that 'had it (the *chiri* recitation) been readily susceptible of identification by Mohamedans as a relic of Hindu worship, its use would centuries since have been discontinued' (p. 100).

absorbed into the Islamic legal system."[9]

On the other hand if a purely legalistic approach[10] is adopted to understand the Malay customary law, much of the *adat*'s significance might be missed, for the *adat* is not based merely on judgments handed down from courts but even more so on consultation and compromise.[11] But this does not rule out the fact that in Islam, in the absence of any express text, custom holds the same rank as *ijmaᶜ* or consensus of juristic opinion. C.K. Meek correctly pointed out that among the Sunnis 'custom over-rides analogical law,' and that in the Hanafite school of thought custom is included as a source of law categorised under *istiḥsān* or juristic preference.[12]

To actually comprehend and appreciate the legal system of the Malay *adat*, one cannot ignore the the influence of Islam and Islamic law. To disregard the symbiotic influence of Islam on the Malays and 'to regard the Malay *adat* as a legal system on its own'[13] would be erroneous. Examination of early Malay legal digests betrays the overwhelming influence Islam has had on the social conduct of the Malays despite the existence also of pre-Islamic and indigenous elements. Some aspects of these customary admixtures are reflected in matters affecting land tenure.[14]

Maxwell's Treatise on Malay Land Tenure.

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9 Ahmad Ibrahim, 'Book Review: Readings in Malay Adat Laws', pp. 121-122, *JMBRAS*, 1XIL: 1.

10 As is the case in Indonesia. See Ter Haar, *op. cit.*, p. 5., who ascribed this approach to Snouck Hurgronje as being the first to point out the fruitfulness of speaking of 'the *adat* that has legal consequences' - thus the term '*adatrecht*' in Dutch or '*adat* law' in English.

11 Ahmad Ibrahim, *op. cit.*, p. 121.

12 C.K. Meek, *op. cit.*, p. 241.

13 In addition to the fact that leaving out certain important materials from one's selection of Malay sources may lead to the narrowing of the concept of the ᶜ*adat*, Ahmad Ibrahim, *ibid.*, p. 122, believes that having been influenced by the emphasis on the ᶜ*adat* law in Indonesia Hooker tries to seek its 'parallel' in the Malay peninsula.

14 M.B. Hooker, 'A Note on the Malay Legal Digests,' *JMBRAS*, 41:2, pp. 157-170, 1968.

The relevance of Malay customary practices pertaining to land tenure had been recognised in general terms by the successive Portuguese, Dutch and British colonial administrations.[15] It was, however, William Edward Maxwell, the much renowned British scholar-administrator, whose keen interest in the matter led him to produce a masterly treatise on the subject.[16]

Obsessed to a certain extent by the early nineteenth century Malacca Land Questions[17] which by his time were still not effectively resolved, Maxwell undertook to enlighten both his fellow administrators and British settlers about the indigenous aspects of land tenure and was desirous that local custom and English law be harmonised without the aid of legislation. The fact that he harboured such a hope bespeaks of the great need for understanding of Malay custom. For his efforts at bridging the gap in understanding, Maxwell felt amply rewarded "if increased recognition and respect for the rights of native land-holders should be obtained thereby."[18]

Citing cases of the first land proclamation in Perak issued under the advice of a British Resident, which contained alien terms, and a land dealing concluded in 1876 'clouded with English legal technicalities aided by ignorant scribes who brought printed

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15 These were acknowledgements by Judge Sir J.T. Claridge in the case of *Abdul Latif v. Mahomed Meera Lebe*, where 'principles of Malayan law and usage were applied'. as cited in T.J. Newbold., *Political and Statistical Account of the British Settlement in the Straits of Malacca*, Vol. 1, London: 1839, p. 161, and by Chief Justice Sir Peter Benson Maxwell who, in his written judgment delivered at the Supreme Court, Malacca on 17th March 1870 in the case of *Sahrip v Mitchell and Endain* commented that "...it is well-known...by the old Malay law or custom of Malacca..." Cited by W.E. Maxwell in 'The Law and Customs of the Malays with Reference to the Tenure of Land", *JSBRAS*, pp. 75-221, No.13,June, 1884, and reproduced as Appendices 2.1 and 2.2. in the present study.

16 Maxwell, *ibid.* Three generations of the Maxwells served the Straits Settlements and the Malay States: the father, Sir Peter Benson, the son William Edward and later, the grandson William Graham. In addition to his own local experience, William Maxwell drew extensively on the writings of other scholars and administrators, Dutch documents and proclamations, and a number of published rulings by British judges of Malaccan land disputes. He also provided appendices of translated extracts from the 'Malacca Code,' 'the Perak Code,' 'the Ninety-Nine Laws of Perak,' and 'the Minangkabau Code.'

17 Denoting the '*concessionnaire*' land problem which the British had inherited from the Dutch as alluded to in Chapter One of this study.

18 Maxwell, *op. cit.*, p.77.

forms from the nearest British Settlement - Penang!"[19] Maxwell doubted if "...to this day, the Malay law of land tenure and Malay thought and feeling regarding land are properly understood by Europeans in Native States..." Otherwise, he predicted that "...there may be reason to fear difficulties in years to come."[20]

He deliberated at length as basic features of Malay customary practices of land tenure,

(i) the recognition of the right of the Ruler to the soil;

(ii) the principles of clearing up, occupation and cultivation of land prior to proprietorship right;

(iii) the payment of the (tenths) tithe;

(iv) the *kerah* system; and

(v) the *pulang belanja* and the *jual janji*.

Maxwell also deliberated on the modes of revenue collection in the Malay States..

He emphasised the Malay tradition which recognised the creation of a proprietary right purely by virtue of the land being cleared so long as the initial effort is followed up by continuous cultivation or occupation. Simple though this may seem, it was, however, tied to the purposes of the clearing and the expected commencement and maintenance of cultivation of the land.[21] On this Maxwell summarized five rules underlining Malay proprietary right, namely:

1. That there could be no proprietary right in *tanah* mati or dead land;
2. That *Tanah hidup* or living cultivated land was of three kinds:-
   (a) Land planted with fruit trees (*tanah kampung* or village land for dwelling),

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19 *Ibid.*, p.76.

20 *Ibid.*

21 Maxwell quite early realised that unlike the steps taken by district administrators in India, the absence of leases for the opening up of land on the hills for shifting cultivation in Malacca resulted in the loss of revenue to the colony.

(b) Wet rice-land (*tanah bendang* or *sawah* or rice-fields), or

(c) Hill-land taken up for shifting crops (*tanah huma* or *ladang* or farm land);

3. That the proprietary right in *kampung* land endured during occupation and afterwards so long as there remained fruit-trees evidencing the land as a *tanah hidup*;

4. That the proprietary right in *tanah bendang* or *sawah* lasted for as long as the land was occupied and for the subsequent three years; and

5. That the proprietary right in *tanah huma* or *ladang* lasted for so long as the land was occupied, which was usually a single season.

The creation of such types of Malay customary right,[22] which is the usufructaury right rather than proprietary right, entailed the presupposed recognition of the right[23] of the Ruler to the soil. Undoubtedly this immemorial right of the Ruler was also retained by the British for quite a long time prior to the introduction of the modern land legislation into the Straits Settlements and the Malay States.[24] It is to the Ruler that all land belonged, or was vested in.[25]

Regardless whether or not it was but 'a barren right,' in a wider perspective, Malay custom recognised the Ruler's absolute discretion to dispose of land to individuals, to consent to occupation or cultivation, to grant concessionary rights to the Chiefs or members of the royal circles, to extract payment from land occupation and to authorise

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22 The right of the subjects here refers to the usufructuary nature of Malay proprietary right, and not to ownership right.

23 The Ruler's right ('but a barren right,' as Maxwell sees it), refers to his absolute privileges to a share in the grain, to collect taxes and to dispose of waste land.

24 See H. E. Wilson, "The Evolution of Land Administration in the Malay States: A Survey of British-Inspired Changes," *JMBRAS*, Vol. 48, Pt. 1, No. 227, May, 1975.

25 Apart from Maxwell, *op. cit.*, who also quoted other Bornean, Sumatran, Cambodian, Siamese, Ceylonese and Chinese sources, see also David S.Y. Wong, *Land Tenure and Dealings in the Malay States*, Singapore: Singapore University Press, 1977, p. 17 and Judith Sihombing, 'Land Tenure in Peninsular Malaysia: A Historical Review', p. 141, in M.B. Hooker, (ed.), *Malayan Legal Essays*, Kuala Lumpur: 1986.

the collection of the tenths tithes or other forms of taxes,[26] and to delegate revenue collection to his representatives. The Ruler theoretically also enjoys the right to forfeit[27] land were the proprietor or occupier in breach of conditions or fail to pay the tithes or taxes.

Seemingly the right of the Ruler as superior authority[28] presupposes the right of individuals to clear and occupy land. Custom dictates that constrained only by his own limited capability, an individual can clear up and occupy unlimited areas of waste land or land left abandoned by its previous occupants. This right may be granted by the Ruler to the individual on any of the following instances:

(i) that he clears and occupies the land free from other obligations other than ensuring the land to be in continuous cultivation and good husbandry; or

(ii) that in addition to his clearing and occupying the land and keeping it in continuous cultivation, he is also obliged to pay the Ruler a certain amount of taxes or tithes to be determined either in cash or in kind; or

(iii) that he clears, occupies and continuously cultivates the land but instead of having to pay taxes or titles to the Ruler, he is expected to perform services[29] for the Ruler.

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26 In many instances collection of the tithe was converted into feudal services. Ahmad Ibrahim and Judith Sihombing, *The Centenary of the Torrens System in Malaya*, Kuala Lumpur: Malayan Law Journal Pte. Ltd., 1989, p. 7.

27 Wong, *op.cit.*, p. 18, and J.M. Gullick, *Malay Society in the Late Nineteenth Century: The Beginnings of Change*, Singapore: Oxford University Press, 1987, p. 99, claimed that the Sultan or his representative could dispossess the occupants at pleasure, or help themselves 'to any produce that they thought worth having whenever they felt able and inclined.'

28 The extent of the Ruler's right on land can be further noted in a section entitled 'Property of Land' under 'The Laws of the Principality of Johore' [translated by J.R. Logan, in Hooker, (ed.), *op. cit.*, 'Readings...,' pp. 83-100] which stipulates that 'if any one discovers treasure or valuables on lands which he has been permitted to occupy by the king or his officers, he shall be entitled to one-half, and the King or Lord from whom he has received the ground shall receive the other half.' The section also stipulates rules against transgression on another's land and the penalties therewith. An almost similar provision with regard to the surrender to the Ruler of treasure discovered on one's land is to be found under section 18 of the 'Kedah Laws.'

29 Basing himself on the *Annual Report of Perak for 1890*, Gullick, *op.cit.*, p. 99, points out that unless specifically exempted in those days every able-bodied *raiyat* had on demand to perform the compulsory service for the Ruler or anyone acting on his behalf for a number of days. But he added that this was not a land tax, for its imposition was not restricted to cultivators only, and those unable

While the Ruler's right with regard to waste lands and to lands previously cultivated but later left abandoned was easily understood by early British administrators, it was the concept of the Ruler's right over land already under cultivation that confounded them. Known also as land concessions, Maxwell amplified this as follows;

> "when Malay laws speak of the grant by the Raja of lands *already under cultivation*[30] to some Chief or royal favourite, it must be understood that what is granted is the right to exercise the royal privileges of claiming from the cultivators a tenth of the produce and of disposing of abandoned and forfeited lands. The Raja's property in the soil is not parted with, and the tenant right of the cultivators is in no way interfered with. The grants of the local Dutch Government in Malacca parcelling out the district to a few privileged individuals, which gave so much trouble to the officers of the East India Company on their succession to the Government of that Settlement in 1825, were of this nature."[31]

What is implicitly clear is that though a Malay subject could freely clear up land, cultivate it and thereby gain considerable proprietary right over it, assurance or security of the right was still conditional upon his continuous cultivation or occupation of the land and his payment to the Ruler or his representative of a proportion of the produce.[32] The Ruler's rights to these were enforceable by seizure of the subject's crop or of his right to the land in case of either his failure to pay the tenth or his abandonment of the land itself.

Continuous cultivation and payment of the tenth became significant requirements of a Malay proprietary right.[33] This not only applied in the context of a subject-cultivator and his Ruler or the latter's representative but also in the prevalent practices of sub-

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to perform the service could even bail themselves out by paying specific compensation.

30 *Italics* original. The distinction between cultivated and uncultivated land adds a new dimension to the ruler's right. Apart from early Malacca, it was these 'ruler's rights' which characterised peasant resentments against a series of Trengganu land concessions during late nineteenth century and the beginning of the present century.

31 Maxwell, *op.cit.*, pp. 92-93. For details of such concessions in Trengganu, see Shaharil Talib, *After Its Own Image: The Trengganu Experience 1881-1941*, Singapore: Oxford University Press, 1984.

32 *Ibid.*, p. 89.

33 Being one of the earliest colonial administrators serving in the state of Perak, Maxwell's claim to have witnessed the payment is the strongest testimony ever documented by a highly regarded expert land administrator. This is despite his (*op. cit.*, p. 98) own admission that the one-tenth tithe was not 'an universal tax in [other] Malay States' and that 'instead of an assessed tenth' the headman exacted a fixed tax of thirty *gantang*s of *padi* for every *orlong* cultivated as the export tax.

tenancies. The original proprietor of land, who has fulfilled his obligations to the Ruler is by custom permitted to allow other persons to settle and work on his land. The sub-tenant, termed by Maxwell as a 'peasant cultivator' is, however, required to share the fruit of his labour with the proprietor and to co-operate with the latter in ensuring the land to be in continuous cultivation.

A disobedient peasant cultivator though in certain circumstances liable to be fined 'ten *tahil*s and one *paha*' is protected from eviction by his feudal superior so long as he continues to pay him his share of the produce and keeps the land in cultivation. This customary provision for a fixity of tenure so long as the tenant keeps the land in cultivation and pays his proprietor the tenth forms the basis of a judicial decision in the case of *Abdul Latif vs. Mahomed Meera Lebe*. The proprietor as the plaintiff who brought the action to recover possession of a piece of land in the belief that the tenancy he had earlier offered to a sub-tenant was terminable at his will, had his application non-suited. Sir John Thomas Claridge, Recorder, and Samuel Garling, Resident Councillor [of Malacca], who sat over the case on March 7, 1829, ruled,

> "That the owner of the soil cannot eject the cultivator as long as he continues to pay him a certain portion of the produce - generally one-tenth.
>
> That the owner of the soil may sell, or otherwise dispose of his interest, without prejudice to the cultivator, and the cultivator *vice-versa*.
>
> That in case the cultivator allows the land to lie waste, the owner of the soil may eject him by due process of law.
>
> That the fact of lands lying uncultivated for periods, is evidence of waste."[34]

Such Malay customary practice reinforced by English legal ruling strengthened the prevalent practices of chains of tenancies or the procreation of one proprietorship right arising out of another so long as a tenant cultivator fulfilled his obligations to his preceding superior proprietor.[35]

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34 Maxwell, *op cit.* See appendices 2.1 and 2.2. of the present study.

35 It is in this respect that Wilson, *op. cit.*, p. 125, viewed the status of the Malay peasant as 'more infinitely preferable to... probably the majority of serfs in czarist Russia.'

Of significance is the recognition that in addition to land left abandoned by its previous cultivator or occupier, under section 13 of the *Ninety-Nine Laws of Perak*, while the usufruct of a *kampung* and *dusun* (orchard) land remains with a deceased's children the land *per se* as a property reverts to the Ruler on the death of the previous occupier or owner.[36] This differs somewhat from the provision under the *adat perpatih*'s *Minangkabau Code* that a *kampung* or *ladang* land left abandoned by a man without leaving an heir or representative would revert to the Chief of his *suku* (clan). The *Code* also provides that in such a case if the farm land is then appropriated by the Chief to someone else, nobody should dispute its appropriation 'for the field has gone back to God and custom declares that there shall be no such dispute.'[37]

As regards the principles of proprietary right entailing the clearing up, the occupation and the cultivation by an individual of waste land or the bringing into life of abandoned land, the *Perak Code* provides that he who clears up waste land for *huma* cultivation gains the land as his property subject to two conditions, namely that he is a Muhammadan and that the land must not be already in the possession of another person.[38] Under the *Ninety-Nine Laws of Perak,* the interest of a first settler is protected by the prevention of a later arrival from taking up land higher up and irrigating it. The later arrival is permitted to take up land lower down on condition that he does not cause interference to the work of the first settler and that he compensates the first settler for the former's 'half loss.'[39] This assertion of right in favour of the person who first clears the

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36 'The Ninety Nine Laws of Perak', J. Rigby (trans.) and R.J. Wilkinson (ed.), in Hooker, *op. cit.*, 'Readings...,' pp. 51-82.

37 Of interest to note is the implicitly diminished status of the Ruler as the absolute owner of the soil. Apart from the direct reference to 'the Chief' (which is to be seen in the light of him being the Ruler's representative) to whom the land reverts, the provision clearly acknowledged God's absolute ownership of land. This strengthened the notion that *adat* reinforces religious injunction.

38 Excerpt of the 'Perak Code' as reproduced by Maxwell, *op. cit.*, p. 171. Maxwell who possessed the manuscript claimed that it was previously owned by Sultan Jaafar of Perak. The fact that a 'Muhammadan' is a prerequisite to proprietary right provides another proof of the strength of Islamic influence in Malay *adat*.

39 *Op. cit.*, Rigby and Wilkinson, Section 43 of the 'The Ninety Nine Laws of Perak,' p. 69. 'Half loss' is not explained in the text. It could probably refer to the fact that in the presence of the subsequent settler, the first settler in all his actions has always to take into consideration the presence and 'interests' of the later settler too, thus diminishing his total dominance of the area.

land is justified by the fact that it was he who has initially undertaken the heavy burden of removing the dense jungle and contending against the challenges of nature till the land was won for the plough and made productive.[40]

The principle of continuous occupation of land as prerequisite to a proprietary right[41] serves a dual purpose. It ensures the proper and fair utilisation of available land by an individual while at the same time promising the genuine occupier-cultivator his long-term security in the land. In Perak, Malay custom stipulates that if for whatever reason the land cultivated for *dusun* (orchard) is left abandoned for some time the previous cultivator can still lay claim of proprietary right to it so long as there are fruit trees on the said land which stand as proof of his labour on it. Unlike the existence of fruit trees as evidence of appropriation of a *dusun*, in the case of *bendang* or rice-fields time forms the essence of a proprietary right. The Perak custom stipulates that a *bendang* can only be left abandoned for a period of not more than three years[42] after which time if it continues to be so left abandoned, it will automatically revert to the Ruler.

As a feature of ancient universal custom,[43] the Ruler as sovereign of the soil is

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40 B.H. Baden-Powell, *Land Systems of British India*, Vol. 1, London: Oxford at the Clarendon Press, 1892, pp. 221-222. See also C.K. Meek, *Land Law and Custom in the Colonies*, London: Oxford University Press, 1946, p. 23. The assertion in favour of the first clearer of land underlines the Malay principle of '*pulang belanja*'.

41 *Op.cit.*, Maxwell, p. 77. This is an extension of the principle that he who clears land establishes his right on it, a principle which seems universal.

42 According to J. Low, before its conquest by the Siamese, *bendang* in Kedah was said to be allowed to go to waste for a much longer period, sometimes even for thirty years. *Ibid.*, Maxwell, p. 79. Despite the Sultan holding absolute power to resume land at any time under the 'Kedah Laws', to suggest the permissibilty of a period of waste stretching up to 'thirty years' appears superfluous.

43 T.J. Newbold, *Political and Statistical Account of the British Settlement in the Straits of Malacca*, (London: 1839), vol. 1, notes that acknowledgement of the sovereign's right to the tenth was a prevalent practice over a great portion of the Jews, the Gauls, the Chaldeans, the Egyptians, the Greeks and the Romans. He claimed that 'it was originally offered to the gods, and their priests, and then to the sovereign, who not unfrequently united the sacerdotal functions with their temporal powers.' (p. 261). See also M.C. Regmi, ('Recent Land Reform Programs in Nepal', pp. 32-37, *Asian Survey*, Vol. 1, No. 7, September, 1961) who mentions the practice of granting of lands to religious philanthropic institution (p. 35), R. Douglas, *Land People and Politics: A History of the Land Question in the U.K., 1878-1952*, London: Allison and Busby, 1976, who mentions the money payment of between 2.5 to 25 per cent of the rent-charge to the Anglican church (p. 99), and Williams A. Phillips, *Labor, Land and Law - A Search for the Missing Wealth of the Working Poor*,

accorded the right to payment of the tithes. The fact that the Malays had inherited certain aspects of the Hindu monarchical system leads some to the belief that the adoption of the same practice of tithe collection and the fixation of its rate at one-tenth of the produce of the soil is largely owed to the Hindu rulers.[44] Despite the possibility of it being an outcome of universal cross-culture,[45] payment of the tithes in Malay society has much stronger roots to Islamic origin.[46]

New York: Charles Scribner's Sons, 1886, who described the prevalence of such practices among the Israelites, Persians, Hindus, Japanese and Chinese, though their percentages varied (pp. 38-179). See also V. Liversage, *Land Tenure in the Colonies*, London: Cambridge at the University Press, 1945, p. 31. Similarly, Gullick, *op. cit.*, p. 117, claimed that in the Malay States, the tithe was 'originally payable to the *imām* for charitable purposes [but] the Malay chiefs appropriated this source of revenue to themselves...' In contrast to what can be inferred from Gullick's assertion, it has to be noted that in partial fulfilment of their roles as religious leaders, the *imām*s also act as *āmil*s of *zākat* (collectors of poor alms), and by virtue of that, to them are also due religiously-sanctioned commissions.

44 See Judith Sihombing, 'Land Tenure in Peninsular Malaysia; A Historical Review,' in M.B. Hooker, *Malaysian Legal Essays*, Kuala Lumpur: 1986, p. 141; S.K. Das, *The Torrens System in Malaya*, Singapore: 1963, p. 7. Despite recognizing the prevalence of such a custom amongst the Ceylonese, the Chinese, the Cambodians and the Siamese, even Maxwell, *op. cit.*, pp. 89-90, seems to attribute the local practice to Indian origin. It has to be noted, however, that even under the Hindu Laws of Manu the ruler's right to the tithes was not specifically fixed at a tenth. Instead the percentage varies. Wendy Doniger and Brian K. Smith, (introduction and translation), *The Laws of Manu*, London: Penguin Books, p. 141, mentioned that under verse 130 of chapter 7 of the Laws of Manu, the king's right was only mentioned as from 'a fiftieth part of livestock and gold to an eighth or a sixth, or a twelfth of crops.'

45 Baden-Powell, *op. cit.*, p. 183 and pp. 267-268, praises the political wisdom of the Muslim Mughal rulers of India who during the best days of their reign, despite closely conforming to old Hindu grain-share system also modified them and introduced an exact Islamicized counterpart such as in the 'lenient form of "khiraj mukasima" [sic] or division of produce.'

46 This is proven by the fact that at least in the 'Perak Code,' Maxwell, *op. cit.*, and the 'Pahang Code,' one of the criteria for permission to clear up land is that the settler must be a Muhammadan (Muslim). Abu Hassan Sham, 'Undang-undang Melayu Lama,' M.A. Thesis, University of Malaya: 1972. As regards the tithes, rooted in prophetic traditions, *ʿushr* or the tenths tax on grain produce is discussed under *kharāj* (as a specific term for land tax) or *zakāt* (tithe) under Islamic law. *Zakāt* itself forms the fourth pillar of Islam. Apart from other factors such as fertility of the soil, and location of the land, one of the most important factors which determines the actual percentage rate of *zakāt* on grain produce is whether or not the land on which the grain is grown is watered by nature, such as rain, or by artificial means, such as irrigation, which imply human efforts. *ʿUshr* generally applies in the case of land which is naturally watered. In the alternative case, the percentage rate of tithe payable is half that of *ʿushr*. See Aisha Abdurrahman Bewley (trans.), *Al-Muwaṭṭa' of Imām Mālik ibn Anas - The First Formulation of Islamic Law*, 17.19 -17.22, Granada: Madinah Press,1992; Charles Hamilton, *The Hedaya - Commentary on the Islamic Laws*, Chapter VI, Delhi: Islamic Book Trust, 1982; Ziaul Haque, *Landlord and Peasant in Early Islam*, Chapter VII, Islamabad: Islamic Research Institute,1984.

Maxwell's claim that the tithe payment is 'fixed by [Malay] custom at one-tenth' brought him into polemical debate with Frank Swettenham who categorically disputed the existence ever of such a Malay custom. Maxwell admitted that apart from earlier information documented by Newbold[47] about the imposition of the tithes and its collection procedures in Malacca, he [Maxwell] was not aware of its imposition in the neighbouring state of Negri Sembilan. He however testified to having personally seen the collection of the tenth by the native Government in the 'only purely Malay province'[48] of Krian, in the north of Perak, in 1874.

Recalling his experience, Maxwell explained that in addition to a capitation tax of $2.25 per family or $1.12 1/2 per adult male imposed upon the inhabitants of Krian, those who exported paddy out of the province had also to pay an export tax. Those who remained in the province and did not export their produce were made to settle the taxation of their grain at the same rate with the *Penghulu* who, as keeper of a roll of cultivators in his district, would base it on the estimated or on the actual measurement of area cultivated. Maxwell also explained that the taxes were peculiar to Krian and not levied in other areas of Perak proper because it was not 'a great grain-producing country' and for fear that its imposition would "discourage cultivators and cause them to abandon cultivation for mining."[49]

Asserting his knowledge of Malay custom too, Swettenham in refuting Maxwell's claim commented at length on the subject and cited the Ottoman incidence of taxation and

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47 Maxwell relied on T.J. Newbold's *Political and Statistical Account of the British Settlement in the Straits of Malacca*, Vol. 1, London: John Murray, Albermarle St., 1839, account of the early native collection method in Malacca. In fact, Newbold also elaborated on the issue of the tenths related to Naning but he claimed that in 'Sungie [Sungei] Ujong, Rumbowe [Rembau], Johole [Johol] and Srimenanti' the levying of the tenths in the crop was not in general usage (p. 86).

48 *Ibid.*, p. 97.

49 *Ibid.*, p. 98. Enforcement of taxation on grain produce in the province may also have to do with the fact that it assured the Sultan of his regular uninterrupted income, for according to Maxwell, 'before 1874, the coast district lying between the Krian river and Pasir Gedabu was regarded as a personal estate of the reigning Sultan.'

a case study of its application in Bosnia-Hercegovina.[50] Interestingly Swettenham also produced other corroborative reports including one by 'Old [Noel] Denison', regarded by Sadka as 'the most experienced and respected district officer in Perak,[51] who testified that he was "not aware of tenths ever levied on the annual produce as 'hasil tanah' or land rent in the state"[52] and even rejected the notion of it being a practice with 'immemorial Oriental usage' or the 'ordinary Eastern rule' or 'Malay tenure of tenths payment.' He argued that as a Settlement Officer he did not find in the land titles any reference to the tenths and offered the explanation that the tax in Krian was in the form of a capitation tax (*'hasil kelamin'*) and a labour tax (*'kerah'*).[53]

Another aspect of Malay custom which also resembles a universal feature is the liability of cultivators to forced service. Maxwell substantiated this from a clause of a land regulation introduced into the Straits Settlements by the British administration in 1830, just a few years after their takeover of Malacca, which declares the exemption of cultivators from forced labour. Earlier, just before the cession of their authority in 1825, the Dutch had prepared and planned to introduce into Malacca a code of regulations for

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50 See *ANM/SP/16/7/4:* Surat Persendirian D.F.A. Hervey: 'Memorandum in Reply to Certain Parts of Lord Knutsford's Despatch, No. 277, of September 16th, 1890: Memorandum on the Revenue-Liability of Landholders in the Straits Settlement', by W.E. Maxwell, British Resident, Selangor, 13th. January, 1891; *ANM/SP/16/7/6:* Surat Persendirian F.A. Swettenham: 'Minute by British Resident, Perak, by Frank A.Swettenham, British Resident, Perak, 13th June, 1894'; *ANM/SP/12/47:* 'Surat Persendirian F.A. Swettenham: Appendix to Minute of British Resident, Perak, 13th June, 1894 on the Proposed Perak Land Code, by F.A. Swettenham, British Resident, Perak, 15th July,1894'.

51 Emily Sadka, *The Protected Malay States, 1874-1895,* Kuala Lumpur: University of Malaya Press, 1968, p. 219. Denison served Perak for almost fifteen years as Collector (cum District Officer) and Magistrate of Krian from 1877 to 1881 and as Suprintendent of Lower Perak from 1881 till his death in 1893.

52 Despite his long experience in Krian and Lower Perak, Denison's seemingly outright rejection of the possibilities of tenths being levied in Krian due to his 'not [being] aware of [the levy]' in Krian and of the tenths payment being part of 'immemorial Oriental usage' or 'ordinary Eastern rule' makes his argument suspect, for Maxwell, who had had a seven-year lead and seniority in service to Denison, appeared more credible when he reasonably claimed that as Assistant Resident to Perak, he [Maxwell] 'had personally witnessed the payment [of the tenth tithes] in 1874,' and he [Maxwell] even qualified his witnessing of the payment as taking place 'only in Krian'.

53 Without referring to any particular locality, Ahmad Ibrahim and J. Sihombing, *op. cit.*, 'The Centenary...', supposed that 'in many cases the tithe was not collected but was converted into feudal services.' (p. 7).

Penghulus which, *inter alia*, would require them to keep all roads in order by calling upon tenants to repair them. These British legislation and Dutch code of regulations provide strong affirmations of the prevalence of the practice of forced labour in Malacca.

Despite the absence of a written definition of the nature and extent of the services which a Raja or Chief or superior proprietor in a Malay State can exact from the cultivator, Maxwell in testifying to the existence of such practice explained that it is limited only by the powers of endurance of the *raiyat*, for superior authority is obliged, from self-interest, to stop short of the point at which oppression will compel the cultivator to abandon his land and emigrate.'[54]

Within conventionally tolerable limits, Malay peasant-cultivator may be required to give his labour in virtually performing anything from "making roads, bridges, drains and other works of public utility,[55] to tend elephants, to pole boats, to carry letters and messages, to attend to his Chief when travelling, to cultivate his Chief's field as well as his own, and to serve as a soldier when required. Local custom often regulates the kind of service exacted from the cultivator in a particular district."[56]

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54 Maxwell, *op. cit.*, p. 108. Apart from unendurable oppression being the cause of peasant abandonment of and emigration from their lands, R.D. Hill quoting the *Singapore Free Press* report of 18 February, 1864, claimed that the escape to Penang from Kedah of 'hundreds of Malays' to avoid forced labour was partly due to the non-existence of the *krah* in the British-controlled territory. See his 'Negative Evidence? Agrarian Protest in the Nineteenth Century Malaya,' pp. 69-78, in Rajeshwari Ghose, (ed.), *Protest Movements in South and South-East Asia: Traditional and Modern Idioms of Expression*, Hongkong: Centre of Asian Studies Occasional Papers and Monographs, No. 72, University of Hoong Kong, 1987).

55 One oft-cited case was the success of Wan Mat Saman Wan Ismail, the Kedah Prime Minister, in mobilising the construction of the famed Wan Mat Saman Canal in 1885. The construction, though not completed entirely on *krah*, was estimated to have cost $35,000, but the profit was said to be double the amount. Mohamad Isa Othman, *Politik Tradisional Kedah, 1681-1942*, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1990, p.53.

56 Maxwell, *op. cit.*, pp. 108-109. In Kelantan, the practice of *krah* was officially put to an end with the coming into force of the *Capitation Tax and Corvee Regulation, 1322* (1904). The *Regulation* declared unlawful all *krah* except those officially sanctioned under the supervision of the *Toh Kwengs*, and in place of the abolition, all adult male persons (except those officially exempted under section 4 of the *Regulation*) were instead liable to an annual capitation tax. *ANM/D/PU1:* 'Capitation Tax and Corvee Regulation, 1322 (1904).'

On another different dimension, as regards the subject of the transfer of land by sale or mortgage, Maxwell elaborated on two particular aspects of Malay customary land dealings, namely, the unique concepts of *pulang belanja* (return of expenses) and *jual janji* (conditional sale).[57] Reminding his readers that the system of land alienation among the Malays and the effects of its transfer did not correspond to any European system, he cautioned against supposing "that when lands in a Malay State have been bought or sold, the transaction has been similar to the purchase or sale of land in British territory, either in the mode in which it has been conducted, or in its practical operation." [58]

Reiterating the cardinal principle that land granted by the Ruler could not be sold without the royal concurrence, Maxwell elaborated the concept of *pulang belanja* as

> "...that the Malay cultivator can transfer only the interest in the land which he himself possesses; that that interest...is merely a permanent and inheritable right of occupancy...that the price to be paid [for the transfer of the interest in the land] has no reference to the value of the land itself (for, in a primitive state of society, that has little intrinsic value), but is calculated, if garden land, by estimating the value of the fruit-trees, or, if paddy land, by assessing at a reasonable sum the probable value of the labour bestowed by the first cultivator in clearing the forest and bringing the field into cultivation."[59]

Being an indigenous concept denoting the transfer of land by sale, *pulang belanja* is explained by the understanding that what a new proprietor of land pays to the vendor is merely the recoupment of outlay incurred by the latter bringing the land into cultivation. So the new proprietor effectively does not buy the land but "simply buys out the occupier by compensating him for his labour, that being the factor which originally created the tenancy, and thus obtains the right to stand in his place."[60]

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57 Both English terms are translated by Maxwell. Though his translation 'conditional sale' is conceptually correct, 'promissory sale' is more precise.

58 Maxwell, *ibid.*, p. 120.

59 *Ibid.*, p. 121.

60 *Ibid.* Note: Though against the existing land law, *pulang belanja* is effectively still being widely-practiced now, though not peculiar among the Malays only. The new term popularly used is *jual usaha* (sale of efforts). The main difference between the two is that whilst *pulang belanja* is a form of transaction effected out of a land duly 'approved' for occupation, the practice of *jual usaha* is especially prevalent among illegal occupiers of State land. Not by any means a new phenomenon, in the midst of genuine squatters, illegal occupations and sales of State land are quite rampantly

On the subject which he considered as the 'only form of hypothecation of land known to Malay law,' Maxwell emphasised that the idea of *jual janji* differed widely from the European concept of the mortgaging of real property. In a *jual janji*, someone sells his proprietary right for a certain sum advanced to him by another, and surrenders his land to the vendee. The transfer, however, is concluded with an attached condition that the vendor shall be retain the right to take back his land if he repays the vendee, at any time, or within a certain time, the sum which the vendee had so advanced him.[61] The fact that it was only the proprietary right of the vendor and not his property in the soil that passed to the vendee, and that possession of the land was actually given to the person who advanced the money and not obtained by him by default of the borrower, made the transaction radically different from the type of mortgage Europeans were familiar with.

An extension to the practice of *jual janji* is the provision in Malay customary law of an avenue for the conditional vendor (the debtor), if he so wished, to retain possession of the land even during the period of his indebtedness by his becoming the tenant of the conditional vendee (the creditor) for

> "the rent in money or kind which he pays, or which some other tenant pays if the land is not let to the conditional vendor, or the profit which the conditional vendee derives from cultivating the land himself if he does not let it, takes the place of interest, which is not charged, usury being condemned by Muhammadan law."[62]

If time ever formed an essence of *jual janji* by the mention of a specific term within which the money was to be repaid by the vendor, his failure to fulfil it within the stipulated period would cause the sale to become absolute (*putus*),[63] thus giving the vendee his full rights of proprietorship to the land. Even so, Maxwell testified that, "the payment of the money at some later time would, in most cases, be sufficient to enable the

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operated by syndicates.

61 *Ibid.*, p. 123.

62 *Ibid.*

63 What is meant here is '*jual putus*' or 'conclusive sale', or, as translated by Maxwell, 'absolute sale.'

conditional vendor to regain his land from a stranger under purely native rule."[64] On the other hand, if no time was fixed, the vendor was free to make repayment at any time, bearing in mind that as long as the debt remained unpaid, the conditional vendee was entitled to retain possession of the land and to cultivate it, or let it, at his pleasure.[65]

Unfortunately, land transactions such as the above-mentioned also gave rise to the practice of the enslavement of free individuals, as a direct consequence of their failure to make good their debts.[66] So, apart from *krah* which underlines the subjects' subservience to their higher authorities, Malay customs also recognised the right of a creditor to forced services of his debtor. Though depending on the degree of debt, for so long as it remained unpaid, the debtor is liable to provide his creditor with agricultural or household labour.[67] In its extremity, the debt not only bonded the individual but might even extend to the enslavement of the members of his family.[68] The extent of debt-bondage or debt-slavery in Malay society during early colonial days was quite alarming.[69]

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64 *Ibid.*, p. 124.

65 Maxwell noted that evidences of such transactions were often written in short documents, some either loosely or informally worded to the extent that their existence depended very much on the trust and good faith of the parties involved. At other times transactions were made devoid of any written agreement. These he rightly noted, necessarily led to later problems arising out of confusions, misleading interpretations and counter-claims such as whether or not the actual nature of transactions involved were in the forms of '*pulang belanja*' or of '*jual janji*' or of '*jual putus.*'

66 Swettenham held that some among the Malays even volunteered debts in the hope of becoming the slave of their chiefs or the Ruler. F.A. Swettenham, *British Malaya*, London: 1948, p. 149. Debt-slavery, however, is to be differentiated from slavery in the ordinary sense.

67 According to Newbold, *op. cit.*, pp.181-182, with the coming of the British, (i) slavery in Malacca was abolished in 1823, (ii) a creditor's right to forced service of a slave-debtor was restricted to a maximum of five years 'with the debt considered as worked out' at a certain percentage or rate, and, (iii) at Penang, both creditor and debtor were made to sign an agreement in front of a magistrate which also ensured that in the process only the debtor was committed, not his family.

68 As regards the situation in Pahang, Hugh Clifford whilst admitting the prevalence of slave-debtors pledging themselves and their children as security, testified that 'the creditors were generally kind and considerate.' Hugh Clifford, 'Life in the Malay Peninsula: As It Was and Is,' pp. 225-256, in *Honourable Intentions*, Paul H. Kratoska, (ed.), Singapore: Oxford University Press, 1983. See also Mahmud bin Mat (Dato), 'The Passing of Slavery in East Pahang,' *The Malayan Historical Journal*, Vol. 1, No. 1, May, 1954.

69 In Perak alone in 1879, there were reportedly a slave population of 3,050 [not necessarily all are cases of slave-bondage] from four districts as compared to a total of 78,034 free population from seven districts. Aminuddin Baki, *Debt-Slavery in Perak*, Unpublished B.A. degree academic

As regards the law of inheritance, Maxwell noted that it varied very much according to locality with the individual Malay States having their own peculiar regulations. In general terms, distribution of property of deceased persons was governed either by "Muhammadan law, or by national custom, or partly by one and partly by the other, e.g., the real property by customary law and the personal property by Muhammadan law."[70] Even though the estate of an intestate was commonly distributed based on the '*hukum shara*^{c},' Maxwell observed that there were other reasons which 'often' occurred to the Malays that the transmission of land should be in accordance with *hukum adat* rather than with that of the *hukum shara*^{c}. He drew this conclusion from cases arising out of the issue of joint property which, basically, was the product equally owned by a husband and wife co-partnership resulting from their joint labour, say in the entire processes of cultivating the land. Maxwell contended that in cases such as this, it would be manifestly unjust to the wife to distribute the joint property as the deceased estate under Muhammadan law for she not only deserved her equal share as a co-partner, but also, her share as wife of the deceased.

Malay Customary Tenure and Aspects of Land Proprietary Rights in Islam.

Overwhelming aspects of Maxwell's treatise, reinforced by direct references in the old Malay Digests, and the recognition of 'local laws' by the Courts at Malacca, all pointed to the depth of Islamic influence in Malay customary practice of land tenure. The

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exercise, University of Malaya, Singapore: 1951, Table II.; Jagjit Singh Sidhu, *Administration in the Federated Malay States, 1896-1920*, Kuala Lumpur: Oxford University Press, 1980, p. 135. Despite alluding to the fact that none of the slaves are Malays (for slavery is against the Islamic religion), Robert Heussler, *British Rule in Malaya: The Malayan Civil Service and Its Predecessors, 1867-1942*, Oxford: Clio Press, 1986, p. 66, claimed that in the 1870's slaves accounted for one-sixteenth of the Malay population in Perak. Although actual trade in slaves was officially forbidden between one country and another vide the Act of Government of India, No. 5 of 1843, (*The Law Relating to India and the East India Company with Notes and Appendix*, London: Wm. H. Allen & Co., 1855, p. 292), Charles Brooke, *Ten Years in Sarawak*, Vol. 2, London: 1866, p. 315, claimed that the British permitted their passing from one land to another.

70 *Ibid.*, pp. 124-125.

particularly constant references to *tanah mati*[71] or dead land, and the idea of a three-year probationary period set against the cultivation of a 'waste' land under the customary tenure, are conclusive evidences of the long assimililation of Islamic principles in the creation of Malay proprietary right.[72]

In the 2nd-3rd/8th-9th centuries, writings on land taxation and its related subjects, the *kharāj,* were discussed by Abū Yūsuf Yaᶜqūb bin Ibrāhîm al-Anṣārî, Abū Zakariyya Yaḥyā bin Ādam bin Sulaymān al-Quraishi, and Abū al-Faraj Qudāma bin Jaᶜfar bin Qudāma bin al-Kātib.[73] Though referring to *kharāj* as the term in general for taxes as well as for a specific land tax, their writings elucidated the nature of the relationship, not only between the state and the individuals in respect of tax on land, but also in the context of Muslim and non-Muslim subjects as inferred from the Prophetic traditions. They also elaborated, among other things, on the effects of taxes on the changing status of a subject, on the instance of his conversion to the Islamic faith or on the effect the purchase of a Muslim had on *kharāj*-land, on the taxability of lands in relation to their fertility, their accessibility to public facilities and services or their total production, on the mechanisms

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71 *Mati*, also interchangeably used with *maut* (meaning die or dead, in Malay) are Arabic loan-words from *māta, mawta* or *mawāt*. Therefore, the term *tanah mati* must have been a direct translation and adoption of the Islamic *al-arḍal-mawāt*, for otherwise, other Malay words such as *gersang, kontang* or *tandus* (all denoting ignored or neglected barren land) could have been used to signify the state of wastelessness of a land.

72 Salleh Haji Buang, 'Undang-undang Tanah Adat Melayu,' *Al-Ahkam*, Jil. 1, 1990, p. 30. This is also among the strongest points of departure of local scholars when they discuss the relationship of Islam to Malay land tenure. See Mohd Rizduan Awang, *Konsep Undang-undang Tanah Islam - Pendekatan Perbandingan*, Kuala Lumpur: Al-Rahmaniah, 1987, pp. 255-266; Ahmad Ibrahim, 'Aspek-aspek Percanggahan Undang-undang Tanah Sekarang dengan Undang-undang Tanah Islam,' Haji Nawawi Haji Ahmad, 'Prinsip-prinsip Perundangan Tanah dan Pelaksanaannya Dalam Islam,' and Sobri Salamon, 'Pembangunan Tanah Sebagai Fardu Kifayah,' - all in their reswpective papers presented at the Seminar Kanun Tanah Negara Ala Malaysia, Kuala Lumpur: 1985, and Nik Abdul Rashid Nik Abdul Majid, 'Undang-undang Tanah: Cara Eksploitasi Mengikut Islam dan Sekular,' a paper presented at Seminar Syariᶜah dan Common Law, Kuala Lumpur: 1992.

73 All entitled *Kitāb al-Kharāj (*though Qudāma's original was entitled *Kitāb al-Kharāj wa Ṣināᶜat al-Kitābah)* and translated and edited with introduction and notes by A. Ben Shemesh as *Taxation in Islam* in three volumes, Leiden: E.J. Bril, 1958-1969. According to Ben Shemesh there were a total of twenty-one books on the subjects, some of which were of similar titles or with slight variations. But only the three above are extant. Other main related works are *Kitāb al-Amwāl* by Abū ᶜUbayd al-Qāsim bin Sallām al-Azdî (d. 224/838), and *Kitāb al-Aḥkam al-Ṣulṭāniyyah* by Abū al-Ḥasan, ᶜAlîMuḥammad al-Māwardi (d. 450/1058) and *Al-Aḥkam al-Ṣulṭāniyyah* by Abū Yaᶜlā Muḥammad bin al-Ḥusayn Ibn al-Farrā' (d. 458/1065).

of tax collections, and on conditions attached to the cultivation of land and their consequences thereof.

As with everything else, land in Islam is vested in Allāh,[74] but as His vicegerent, man is entrusted with the responsibility of managing the earth. Together these concepts enjoin on the State, as representing the entire Muslim Community, to administer just and equitable law on the basis of ensuring public good (*maṣlaḥah ᶜāmmah*). Under the *shariᶜah,* land, as immovable property (*fayʾ*), obtainable by the State by way of a treaty in times of peace or as spoils of war, is basically divided into two: cultivated land and uncultivated land. As regards uncultivated land, the subject of dead land (*al-arāḍī al-mawāt*), particularly its definition and the conditions for its rehabilitation, was deliberated at length by jurists (*fuqahāʾ*) of the various Islamic schools of thought (*madhāhib*). Dead land is broadly defined as land not belonging to someone, land cut-off from other lands in a developed area, virgin land distantly situated from a water source, and land previously developed or cultivated but long since left abandoned to the extent that its previous owner is not known.[75]

By virtue of their difference in emphasis, some jurists defined dead land by its functional aspects of development and utilisation, whereas some others defined it from the physical or geographical features such as the land's close proximity to developed lands or sources of water. In general, however, these definitions can be clustered into three main categories, such as:

(a) land which has never been explored and which does not belong to anyone;

(b) land which has long been left abandoned and which does not belong to anyone despite the fact that it has been developed previously; and

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74 Al-Qurān, 7:125.

75 Apart from the land not belonging to or in the possession of anyone, Abū Yūsuf, *op. cit.*, p. 118, further clarifies that it should also not be a 'village common lands or grazing ground, meadows, cemeteries, or forests or public squares for cattle and sheep.' Halil İnalcik, ('Part 1: The Ottoman State: Economy and Society, 1300-1600', in Halil İnalcik (ed.) with Donald Quataert, *An Economic and Social History of the Ottoman Empire 1300-1914*, Cambridge: Cambridge University Press, 1994) differentiates the above definitions from wastelands, such as forests, swamps, marshes and deserts, apart from abandoned arable lands (p. 120).

(c) land which is far distant from developed lands and which does not belong to anyone.

With regard to 'distance' as one of the criteria set to determine whether or not a land falls into the category of *mawāt*, Abū Yūsuf defined it as 'that land at the nearest limit of which if a man were to stand and shout at the pitch of his voice no one in the *ʿāmir* [developed] land could hear him.'[76] This seemingly arbitrary definition is, to Ziaul Haque, rather peculiar and causes the differentiation between it and *al-ḥimā'* (reserve land) to be vague.

By the authority of the Prophet, proprietary right to a dead land is, in principle, created upon anyone who clears and revives it.[77] To this entailed other conditions pertaining to occupancy and cultivation. Jurists differed on the issue of the legitimation of an occupation. Some were of the view that the Prophet's approval provides all the necessary legitimation whereas some others were of the view that no revival is lawful without the permission of the *Imām* (the authority).[78] Though also of the first view, al-Shāfiʿī held that obtaining permission from the *Imām* is preferable, and Mālik qualified that it all depended on the location of the land to be revived; if it lay near a developed area permission of the *Imām* is necessary but if it lay in a virgin area or wasteland, no permission is required.[79] Underlining the importance of an authority especially in cases of dispute and in ensuring public order, the majority among them, however, subscribed to

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76 Abū Yaʿlā, *op. cit.*, p. 193; Al-Māwardi, *op. cit.*, p. 179; Ziaul Haque, *Landlord and Peasant in Early Islam*, Islamabad: Islamic Research Institute, 1984, p. 264. The English translation is quoted from the latter.

77 Quoted by Yaḥyā bin Ādam, Qudāma bin Jaʿfar, and Abū Yūsuf, *op. cit.*, pp. 65-68 (vol. 1), p. 31 (vol. 2), and p. 120 (vol. 3) respectively, who also amplified that 'no trespasser has any right to the revived dead land.' Qudāma even explained that in one ḥadīth, the Prophet instructed that palm-trees unlawfully planted by a trespasser be uprooted whereas, in another (involving the cultivation of grain), the Prophet instructed that the trespasser be compensated for his expenses but not given the share in grain.

78 The first view was held by Abū Ḥanīfah, Sufyān, Mālik and al-Awzāʿī and the second by Abū Yūsuf, Ibn Abī Laylā, Zufar, and Bishr bin Ghiyāth. Qudāma, *ibid.*, p. 32. See also Ziaul Haque, *op. cit.*, pp. 248-270, who also discusses other forms of land alienation (*iqṭā'*).

79 Sobri Solomon, 'Pembangunan Tanah Sebagai Fardu Kifayah,' a paper presented at the Seminar Kanun Tanah Negara Ala Malaysia, Kuala Lumpur: 1985, p. 18.

the second view.[80] Under the Ottomans too, the principle of proprietorship based on first occupation did not apply, for under the doctrine of eminent domain of the State, validation from the authority was deemed necessary.[81]

On the question of cultivation, to Caliph ʿUmar al-Khaṭṭāb was attributed the imposition of the probationary period of three years for an individual to ensure the cultivation of his land, failing which, the land would revert to the State.[82] In a landmark case, ʿUmar took away from Bilāl bin al-Ḥarîth al-Muzanî parts of the land at the al-ʿAqîq valley which had been alienated to the latter by the Prophet. ʿUmar took the action due to Bilāl's failure to cultivate the said land.[83] By their mention of 'the remainder' which was distributed to other Muslims,[84] Yaḥyā bin Ādam, Qudāma bin Jaʿfar and Abū Yūsuf were implying the partial confiscation of the land, not its entirety.[85]

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80 Abū Yaʿlā, *op. cit.*, quoting al-Māwardi, recorded two Prophetic sayings advanced by both sides as the basis of their respective arguments.

81 Halil, *op. cit.*, p. 105.

82 Qudāma, and Abū Yūsuf, *op. cit.*, p. 33 and pp. 119-120 respectively. The three years is effected from the commencement of revival of the land or its enclosure (by way of the individual effecting signs of clearing or constructing landmarks such as the digging of a well on the land). The land would belong to anyone who revives it by cultivation afterwards. Yaḥyā, *op. cit.*, p. 68. According to Halil, *op. cit.*, pp. 124-127, the Ottoman Rulers' abrogation of freehold grants for failure of the owners to cultivate them within three years was one of the causes which led to insurrection against them and which saw the rise of Bayezid to the Turkish throne in the middle of the sixteenth century.

83 Bilāl was purported to have failed to cultivate the land for fifteen years. Mohd Ridzuan Awang, 'Pengmbilan Balik Tanah: Satu Kajian Mengikut Undang-undang Sivil Dalam Islam,' *Islamiyat*, Jil. 6, 1985, p. 15.

84 *Op. cit.*, pp. 68-69, p. 33 and pp. 76-77, respectively but with Qudāma specifically mentioning al-Zubayr bin al-ʿAwwām as the beneficiary, and on whom a probationary period of three years was also imposed.

85 ʿUmar was reported to have finally forfeited the entire piece of land when, upon his offer to Bilāl to determine the portion which would be within his capacity to cultivate, the latter refused. See Irfan Mahmud Raana, *Economic System Under Umar the Great*, Lahore: Sh. Muhammad Ashraf, 1972, pp. 19-20. This contradicts Abū Yūsuf's version (*op. cit.*) which reported that in view of his incapacity to develop the lands 'between the sea and the desert,' Bilāl consented to ʿUmar's proposal that it should be granted to others 'excluding the mines found in it.' Frede Løkkegaard, *Islamic Taxation in the Classic Period - With Special Reference to Circumstances in Iraq*, Philadelphia: Porcupine Press, 1978, p. 15, mentions that Bilāl's family was repaid by ʿUmar the profit from mineral.

ʿUmar's action underlines the reciprocity of two general principles. The first is that whilst the opportunity for the clearing of waste land is limited only by a man's own capability, it is morally and legally imperative upon him to surrender the cleared or enclosed land to others the moment cultivation of the land proves to be beyond his capability.[86] Secondly, it invokes the responsibility of the State to safeguard and ensure that the larger interest of the community is not jeopardised. It is incumbent upon the authority to intervene and ensure that lands are fully utilised, but in so doing, to also ensure that they are not unduly monopolised by the wealthy few. In fact, other than exercising the right to alienation (*iqṭāʿ*) of lands and thereby, placing it under control, the State too can, and at times ought to, assist in developing the land, thereby generating revenue from it.[87] It is in the light of this that the delicate balance between the permissibility of private ownership and the security of public interests is preserved. Of underlying importance is the fact that mere enclosure, clearing or token cultivation of a land (which does not constitute its total revival) does not confer proprietary right to an individual, and the State is always justified in forfeiting land if its use were abused or proved harmful to the community.[88]

As regards land taxation, its classification in Islam falls under two major categories, the *kharāj* land and the *ʿushr* land, though the latter is also categorised under commercial tax or customs levy.[89] Jurists differ in their opinion in determining the type of land to be categorised as *kharāj* or as *ʿushr*. Other than the physical location of a land,

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86 This was the collective views of Abū al-Zināḍ, Mālik, Abū Ḥanīfah, Sufyān, Ibn Abī Laylah, Ibn Abī Sabrah, Zufar, Muḥammad bin al-Ḥasan, Bishr bin Ghiyāth, and Abū Yūsuf himself in so far as it involves *kharāj* lands (Abū Yūsuf, *op. cit.*, in both vols. 2 and 3, p. 77). Apart from ensuring cultivation, it is also the authority's responsibility to ensure the individual's payment of *kharāj* tax. This was also the condition for *tapu* land under the Ottomans with a further addition that the peasant-owner is also liable to service. Halil, *op. cit.*, 109.

87 One way is by the State directing the *bayt al-māl* to develop the land and employ the peasants as the employees, or, by assisting in the opening up of uncultivated areas and providing watercourses. Abū Yūsuf, *op. cit.*, p. 106.

88 Mahmud Abu al-Saud, 'The Exploitation of Land and Islamic Law,' *Islamic Review*, March, 1952, p. 9; S.M. Yusuf, *Economic Justice in Islam*, Lahore: Sh. Muhammad Ashraf, 1977, pp. 210-22.

89 Hailani Muji Tahir, *Pengenalan Tamadun Islam Dalam Institusi Kewangan*, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1986, p. 27. As a tax on grain produce, apart from its discussion under *kharāj*, *ʿushr* is discussed under *zakāt*.

religious status of the land holder or occupant forms an important distinctive criterion. In advancing four conditions upon which the category of a land is decided, al-Māwardî[90] holds to religion as the principal criterion, a view which seems to be shared also by Abū Yūsuf who, in reply to Caliph Hārūn al-Rashîd, outlines two examples under which the category of land and its tax is decided. [91]

Religious faith as a distinctive factor in the determination of the rights to and limitations on land ownership, as well as privileges and obligations to taxation, has strong ramifications not only during the early centuries of Islam but also in later and other Muslim societies including that of the Malays. In at least two of the earliest Malay legal digests, being a 'Muhamadan' forms the main precondition for the granting of permission by the Sovereign to anyone wanting to clear and occupy waste lands.[92] It was only with the reception of British-inspired land legislation that religious faith was gradually phased out[93] from the criteria of ownership, only to be somewhat replaced later by ethnic identity[94] as a discriminative criterion.

The permutability of *kharāj* and *ᶜushr* is quite complex. For example, jurists also differ on the question of the convertibility of a *kharāj* land to an *ᶜushr* at the instance of its holder embracing the Islamic faith or when the original *kharāj* land is purchased by a Muslim.[95] In his simplification, Baber Johansen summed up that *'ᶜushr*...is always related to the religious status of the proprietor, whereas *kharāj* tends to become a land tax

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90 Al-Māwardi, *op. cit.*, Cairo: Sharikat al-Maktabah wa Maṭbaᶜah Muṣṭafā, p. 147.

91 Abū Yūsuf, *op. cit.*, vol. 3, p. 82; Mohd. Ridzuan Awang, *op. cit.*, p. 203. Qudāma bin Jaᶜfar advanced six categories of *ᶜushr* land, and in all of them, Islam is the criteria.

92 Refer footnote 46.

93 The term 'Muhammadan' was in use in the *Maxwell Code* of 1891 and also appeared in the Trengganu *Land Enactment* (No. 3 of 1357), 1939.

94 The concept of 'Malay Reservation' provides such proof. The Federal Constitution definition of a 'Malay' virtually makes it synonymous with Islam. See Chapter One, p. 67 of this study.

95 Yaḥyā bin Ādam, *op. cit.*, pp. 26-27; Qudāma bin Jaᶜfar, *op. cit.*, p. 38.

without religious connotations.'[96] But of particular importance are the criteria set by Muslim jurists on the factors to be taken into account prior to the taxability of a land, be it as *kharāj* or *ᶜushr*. One of the determinants used is whether or not the land in question from which crops are produced is irrigated or naturally watered, for the different sources or modes of watering entails a different calculation of the percentage taxable.[97] In the same manner, the type and the total amount of yields, as well as the factors affecting it such as the capacity of land,[98] or calamities which had befallen the crops or the cultivator, if any, are also taken into account for the State consideration of tax rebates or remissions. These basic regards for human welfare, as also reflected in Malay legal digests, represent the pillars of social and economic justice under the *Shariᶜah*.

Related to the assessment of the taxability of a land is the mode of its collection. For the collection of tithes (zakāt) *ᶜāmil*s were directly appointed by the State authority and *kharāj* and *ᶜushr* tax collectors were officially assigned by the central Government to the provinces to inspect lands, to make assessment of crops and to collect taxes for the central treasury (*bayt al-māl*). For their efforts the tax gatherers or collectors were paid commission.[99] Soon, however, the mechanism somewhat changed and evolved into tax-farming (*qabālah*) whereby, in return for tax-farmers' payment of a fixed rent to the State,

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96 Baber Johansen, *The Islamic Law on Land Tax and Rent*, London: Croom Helm, 1988, p. 12. His view on *kharāj* is also shared by S.A. Siddiqui, *Public Finance in Islam*, Lahore: Sh. Muhammad Ashraf, n.d., p. 70 and Hossein Askari, 'Islam and Taxation,' Chapter 5, in Hossein Askari, J.T. Cummings and M. Glover, *Taxation and Tax Policies in the Middle East*, London: Butterworth Scientific, 1982, p. 65. John Robert Barnes, *An Introduction to Religious Foundations in the Ottoman Empire*, Leiden: E.J. Brill, 1986, pp. 21-22, described *kharāj* as consisting of all conquered lands, not divided among Muslims and immoblised as *waqaf* lands and were only given to non-Muslims on loan.

97 Yaḥyā bin Ādam, *op. cit.*, p. 29; Abū Yūsuf, *op. cit*, p. 78 and p. 130.

98 Three methods of assessing *al-kharāj* as enumerated by Al-Māwardī are: (i) on the basis of the total area of the village irrespective of the actual area cultivated, (ii) on the total cultivated area alone, or (iii) on the division of the total with the State getting its share. S.A.Q. Husaini, *Arab Administration*, Madras: 1948, p. 196; Siddiqui, *op. cit.*, p. 75.

99 Abū Ḥanīfah and Abū Yūsuf was of the opinion that fees for the collectors should be derived from the *kharāj* or *ᶜushr* crops whereas Mālik held that for *ᶜushr* land the fee should come from the crops while for the *kharāj* the collector's was to be borne by the land owner. Whislt agreeing with Mālik on the *ᶜushr*, Sufyān al-Thawrī held that on the *kharāj*, the fee was to be borne by the Government. Qudāma bin Jaᶜfar, *op. cit.*, p. 26.

the tax-farmers (*mutaqābilūn*), who were not State officials, were authorised to collect taxes from tenants and cultivators in specified areas. Though the system provided convenience to the State, historical evidences showed that in many instances it was also open to abuse. Ibn ᶜAbbās, Ibn ᶜUmar and Saᶜîd ibn Jubayr were reported to have objected to the practice characterising it as *ribā'*, for apart from deriving profit from it as unearned increment over and above the rate of taxation, the tax-farmers were also involved in the exploitation of the poor peasants.[100]

Abū Yūsuf too was known to have had strong objections to tax-farming and had advised the Caliph against allowing it. Though not citing *ribā'*, he argued that tax-farmers act wrongfully for the sake of their gains. He, however, conceded that if the people themselves preferred and chose to elect a wealthy man among them to be responsible for the collection of their taxes, then the Caliph should investigate the request, obtain the guarantee from the appointed man in the presence of witnesses, and appoint another trustworthy person who was experienced in the taxation department to oversee that there would not be oppression on the people.[101] In India, the equivalents of tax-farming were the *Zamindari* and the *Taluqdari* systems, and under the Ottomans, the *Iltizām* system which started in the seventeenth century.[102] Like the *qabālah*, they were also prone to abuse ranging from fraudulent assessment of tax and non-delivery to the treasury of taxes paid, to extortion and exploitation of the farmers.[103]

Caliph ᶜUmar I was reputed to have reminded his collector that if the *kharāj*-payers were unable to pay, they should not be charged beyond their capacity so that they

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100 Ziaul Haque,'Metayage and Tax-Farming in the Medieval Muslim Society,' *Islamic Studies*, Vol. 14, No. 3, Autumn, 1975

101 Abū Yūsuf, *op. cit.*, pp. 74-75.

102 The system was abolished in 1858 by the coming into force of Article 3 of the Ottoman Land Code. Halil, *op. cit.*, pp. 59-60.

103 Siddiqui, *op. cit.*, 15; Imtiaz Husain, British Land Revenue Policy in North India - the Ceded and Conquered Provinces, 1801-33, Calcutta: New Age Publications Ltd., 1967, p. 13; Ziaul Haque, *op. cit.*, 'Metayage and Tax-Farming...,' p. 222; Charles Issawi, *The Economic History of Turkey, 1800-1914*, Chicago: The University of Chicago Press, 1980, p. 357.

would not be burdened beyond their ability.[104] On the other hand, according to Siddiqui, if the tax-payer is in the position to pay but delays the payment, his property can be attached, but if he is without attachable property, he can be imprisoned and the State can also keep under its control the produce of the defaulter until the *kharāj* is paid.[105] As for the default of a tax-farmer, he can be imprisoned.[106]

Unlike their co-religionists, however, tax-farming in the form it is understood above was virtually unknown in the old Malay legal digests and non-existent in any of the Malay States prior to the coming of the West.

The Transformation of Administrative Mechanisms.

Unlike the Dutch, the British did not waste much time in instituting English law into their new settlements. Initially confining its application only to subjects of Their Majesty within the Straits Settlements,[107] the law steadily found its way into the entire Malay peninsular when one after another of the Malay States became British protectorates. English laws and institutions were infused into local customs and practices through the introduction of modern systems of administration.

Immediately following the Pangkor Engagement of 1874 Residents were despatched and in place of the Sultan's usual practice of informal consultation[108] with his

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104 Yaḥyā bin Ādam, *op. cit.*, p. 28 and pp. 61-62.

105 Siddiqui, *op. cit.*, p.75.

106 Halil, *op. cit.*, pp. 64-65. He claimed that under Mehmed II many tax-farmers were put in jail.

107 Initially English law was introduced to protect the security and interests of British colonial officials and their families, traders and merchants. Subsequently its application was widened to local inhabitants of non-Muslim faith and those who chose to be subjected under the said law such as those engaged in contracts and business ventures. Finally, the English legal system evolved into the law of the land by the granting and introduction into Penang in 1807 of The First Charter of Justice followed in 1826 by the Second Charter which, in addition to Penang, was also applicable to Malacca and Singapore. Finally the Third Charter was introduced in 1855 to 're-organize the existing courts.' See Ahmad Ibrahim and Ahilemah Joned, *The Malaysian Legal System*, Kuala Lumpur:Dewan Bahasa dan Pustaka, 1987.

108 Gullick, *op. cit.*, p. 25.

court officers and chiefs, the colonial regime in 1877 seized on the opportunity and established in Perak and Selangor, the new institutions of State Councils. From this new legislative organ of authority equipped with formal procedures flow Western-type consultation processes and administrative rules and regulations.[109] The colonial-drafted *Perak Land Regulations*[110] passed by the State Council in 1879 became the precursor of land legislation in the Malay States.

Obviously the introduction of such State Councils undermines the traditional position of the Ruler as the absolute authority in his state. It also diminishes the influence of his ruling-class and territorial chiefs though not altogether amounting to their demise.[111] From then on *de facto* control and authority shifts to the Residents[112] who, right from the beginning of assuming the 'advisory' position to the Sultans, had under their direction the primary administrative and judicial functions of the State[113] the implementation of which was delegated through their respective District Officers.[114] In them lay an unrivalled

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109 According to Gullick, *ibid.*, pp. 24-25, the Malay members of the councils regarded the formalities of motions and proposals as well as minute and note taking routines as 'simply not an occassion to which Malay etiquette applied' and to them the occasion was 'non-Malay in character.'

110 Along with the *Regulations*, came the division of land into different classes and the hitherto locally unfamiliar term of lease such as for '999 years' and other rights reserved for the 'state' instead of the Ruler. See Sihombing, 'Land Law in the Federated Malay States Until 1928,' pp. 7-25, in *op. cit.*, 'The Centenary...' pp. 9-10.

111 Khoo Kay Kim, *The Western Malay States*, Kuala Lumpur: p. 226; D.R. Sardesai, *Southeast Asia: Past and Present*. London: MacMillan Educational Ltd., 1989, p. 99.

112 W.C. Corry, 'The Passing of the British Advisers in Malaya,' pp. 48-51, *December Chronicle*, February, 1957. The Selangor Sultan, Abdul Samad, virtually left ' every thing regarding the opening of our country and the collecting [of] its revenue in the hands of our friend [Swettenham]..." (Ernest Chew, *Sir Frank Swettenham's Malayan Career Upto 1896*, Singapore: University of Singapore, 1966, p. 73).

113 William R. Roff, *The Origins of Malay Nationalism*, Kuala Lumpur: Penerbit Universiti Malaya, 1980, p. 16.

114 Announcements of Malays filling up important posts were also made in Council proceedings, such as the appointments of Raja Chulan as the District Officer of Upper Perak, and the Orang Kaya Menteri, Wan Muhammad Isa as the officer in charge of the Selama District. *ANM/Misc. 8 (3)*: 'Minutes of the Conference of Chiefs of the Federated Malay States held at Kuala Selangor, 20-23 July, 1903.'

discretion and final authority over matters of revenue and law and order.[115] The eventual replacement of these traditional leaders at the district levels by colonial officers not only widened the gap between the Rulers and his subjects in the villages but also put the *penghulu*s in a 'rather exposed position'[116] making more awkward their roles as go-betweens.

Customary land tenure experienced a major overhaul. In its place were new land administration procedures laid down through formal legislative processes. Unlike before, proprietorship of land was now subject to the fulfilment of sets of legal requirements. Instead of simply clearing and occupying land, individuals had now to formally apply to the land office for permit or licence to occupy. Upon free occupation of waste land subject only to one's physical ability is now imposed proper survey and measurement of boundaries. Prescriptive right to land previously gained by way of long occupation and continuous cultivation is now displaced for detailed technicalities of title registrations. Security of ownership of land is only verified by the issuance of land titles stamped with the Collector's seal of office. In place of the familiar tenths tithe is now the annual quit rent. As opposed to the traditional *jual janji* and *pulang belanja*, land dealings, including transmissions, are now taken as valid only for as long as they are officially registered at the Land Office or the Registry of Titles Office, and Collectors of Land Revenue now substitute the Chiefs and the *Penghulu*s.

With the formation in 1896 of the federation of the four Malay States,[117] followed

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115 Ranging from revenue collection and disbursement, customs and other dues, lands and mines, to matters of public order exercised by the police and the courts. Interestingly, the former Governor Weld himself admitted that 'not a penny of money can be spent out of the State revenues wihout the assent of the Governor.' See Sir Frederick Weld, 'The Straits Settlements and British Malaya,' pp. 265-331, *Proceedings of the RCI*, Vol. XV, 1884, p. 281. In his description of the ' brushing aside' of the Sultans and the traditional Chiefs, an Australian Senator explained in 1906 that the District Officer has had the power to approve land up to ten acres, the British Resident up to 640 and above that the Resident-General of the Federation. *ANM/B/SUK2*: 'Report on the FMS and Java: the Systems of Government, Methods of Administration and Economic Development by (Senator) Staniforth Smith (20 Jun, 1906) to the Parliament of the Commonwealth of Australia, Victoria.'

116 J.M. Gullick, *Rulers and Residents: Influence and Power in the Malay States 1870-1920*, Singapore: Oxford University Press, 1992, p. 185.

117 The Federated Malay States of Perak, Selangor, Negri Sembilan and Pahang.

later by the enlarged 1948 federation,[118] the Rulers' were, in a sense, driven further into the back seat. Apart from their fast losing to the Residents effective power of governance over their own respective states and subjects, the Rulers' authority experienced further erosion with the centralisation of authority in the hands of the Resident-General and later, the High Commissioner, of the federation. The Rulers were somewhat compensated when political independence was achieved in 1957. They regained their traditional position as titular heads of state, though largely confined to ceremonial capacities as guardians of Malay culture and Islamic religion. Despite their legal authorities being redefined and their legislative functions virtually taken over and exercised by the State Authority,[119] they were at least relieved from having to heed the advice of colonial administrators.

Powers which previously shifted to the State Residents during the colonial period were now effectively exercised by the democratically elected *Menteri Besar*. The posts of District Officers previously filled by colonial administrators whose main preoccupations were collection of revenues and maintenance of law and order had now been taken over by locals. While the task of collecting land revenues remains the primary objective of the land offices,[120] other diversified areas of land development are given equal emphasis, in

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118 The Federation of Malaya.

119 The 'State Authority' is defined under Section Five of the *National Land Code* as the 'Ruler of a State or the Governor as the case may be'. In day to day reality, however, the function is carried out by members of the State Executive Authority (better known as the Executive Committee, in short the EXCO) composed of a number of elected representatives in a Westminster-type State Assembly headed by the *Menteri Besar*. The EXCO is assisted by layers of public administrators led by the State Secretary, who together with the State Legal Advisor and the State Financial Officer become ex-officio members of the EXCO. References made to 'the Ruler-in-Council' imply a legalistic definition of the Sultan's or the Ruler's exercising his powers under the State Constitution through consultation and advice of the *Menteri Besar* with the concurrence of the EXCO. On the specific provisions in the respective State Constitutions regarding the 'Executive Authority' and the 'Executive Council', see *Constitutions of the States of Malaysia*, Kuala Lumpur: International Law Book Services, 1991. As for the Federal Territory of Kuala Lumpur, members of the Land EXCO consisted of representatives of Government departments, namely from the Prime Minister's Department, the Treasury, the Office of the Director General of Lands and Mines (ODGLM), the Selangor State Government, and, the Federal Territory Development Division of the Implementation and Coordination Unit of the Prime Minister's Department.

120 Since the days of colonial administration, the District Officer and his assistants whenever attending to land matters were referred to as Collectors of Land Revenue. In 1985 the title Collector of Land Revenue was changed to District Land Administrator, and in 1994 to Land Administrator.

addition to the more expanded quasi-judicial roles of land administrators.[121]

Despite his traditional role in the collection of revenue, the duties of the *penghulu* are manifold. As a person responsible for the keeping of the peace in his *mukim*s, he also arbitrates in disputes, surrenders serious offenders to his chiefs or brings minor offenders to his court, and informs the district chief of the general affairs of the villages under him.[122] The *penghulu* is also consulted in land settlements. His role in this regard ranges from merely attesting to the status of a new settler or allocating new lands to arrivals from outside the area to assisting the Settlement Officer, the Collector of Land Revenue or the Surveyor in the carrying out of survey work. But unlike in the past, he is not paid any special allowance for whatever assistance he renders in surveys.[123] When required he is also the man responsible for carrying out the population census. Under the new system of administration the post of *penghulu* is no longer the hereditary prerogative of a certain lineage.[124]

Land and the Malay Resistance to Colonial-inspired Changes.

It took the British more than thirty years to actualise a systematic and stable form of land administration in Penang. It was only after 1818 when the Governor, deeply embarrassed by a Court judgment against the Government,[125] took corrective measures to ensure the inclusion in future titles of all the necessary conditions to safeguard the

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121 When exercising the powers and performing the duties involving land foreclosures and order for sales, land acquisition, and small estate distribution.

122 Roff, *op. cit.*, p. 7.

123 *ANM/MISC.19:* 'Minute on Landed Tenures of the Prince of Wales Island: 15 August, 1823.'

124 The *penghulu* has changed from a traditional hereditary appointee to a democratically elected grassroot leader to a salaried public servant appointed by the State's Public Services Commission. Syed Husin Ali in his 'Social Stratification in Kampong Bagan - A Study of Class, Status, Conflict and Mobility in A Rural Malay Community' (*Monograph of MBRAS I*, Kuala Lumpur, 1964) gives an interesting account of conflicts which arose amongst villagers when the state of Johore in 1956 decided that the office of *Penghulu*, previously inherited by the next-of-kin of the deceased *Penghulu*, was to be filled up by a candidate elected by eligible members of the *mukim* through a voting system conducted by the District Office.

125 See *East India Company v. David Brown, 1818* in the following chapter of this study.

Government's interest. Most important of all was the introduction of the Bannerman's clause which, for the first time, stipulates in no uncertain terms, a landholder's liability to payment of the annual quit rent - the rate, the period of its becoming due, the place of payment and to whom payable, and the Government's reserved right to resumption.

The Company's earlier lack of clear direction and Light's haphazard land disposal policy had all the while worked to the advantage of land settlers, squatters and absent speculators. As proved by W.E. Phillips in 1823[126] and W.E. Maxwell[127]three scores later, the Government had time and again failed to realise the expected revenues from land largely due to its own maladministration, lack of staff and shortage of competent surveyors. This led to the settlers' repeated successes in their resistance against the Government's attempts at land disposal policy reforms. Without displaying any form of open defiance or aggression against the authorities, they succeeded in subverting the Government's efforts by their non-cooperative stance and cool response to the Government's initiatives.

These were the tactics deployed by settlers and agriculturists of early Singapore. They manifested their disapproval of Government's policy by refusing titles to the land they occupied[128] or by abandoning their cultivation rather than accept proposed policy changes on land tenure which they deemed to their disadvantage.[129] They even succeded in forcing the Government to discard fair and equitable policy.[130] This points to the fact

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126 *ANM/MISC.19, op. cit.*

127 *ANM/SS7:* 'Report on the Procedure which is Being Employed to Re-organize the Land Revenue Administration in Penang: 21 June, 1886.'

128 As reported by the strong tendency shown by occupants of land to postpone their applications for permanent title simply to avoid payment of quit rent. See W. Makepeace, G.E. Brooke and R.S.J. Braddell, (gen. eds.), *One Hundred Years of Singapore*, London: 1921, Vol. 1, pp. 303-304.

129 *CO/273/185*: 'SS No. 22432: R. Meade to C.P. Lucas 17 November, 1892 and C.P. Lucas to R. Meade, 17 November, 1892.'

130 The Government's discarding of its original policy led to the rapid decline of agriculture from 1845 onwards. As alluded to in the earlier chapter, worse still was the authority's practice of issuing 999-year leases, renewable for a further 999 years, from 1867. James Lornie, 'Land Tenure', in Makepeace, Brooke and Braddell, *ibid.*, p. 311.

that for desperate want of population and agriculturists to settle on Penang and Singapore the authority was very compromising with the settlers.

As regards Malacca the whole approach was different. Despite recognising the customary tenure of an already settled population, the Government, confronted with land problems left over by the Dutch, seemed determined to stamp its authority and to impose its will on the land owners. This culminated in the Government's decision in 1828 to buy out the proprietor's right to ten percent tithe impropriation on occupants of their land in exchange for generous payment of annuities. In their place the Government passed the collection of the tenth over to the *Penghulu*s, issued title deeds to peasants in occupation of land and carried out comprehensive land survey.[131] The failure of the Government's new measures were manifested by its decision to abolish the survey office two years later in an economy drive which also signalled an admission of failure on the part of the *penghulu*s to collect the tenth efficiently.

Strong resistance against new land legislation was evident in Malacca when the majority of peasants were not willing to accept the 1839 commutation of the tenth to a money rent and to the issue of land lease titles.[132] They preferred the more secure customary tenure.[133] In 1848, E.A. Blundell reported of the peasants' continued resistance over the 'unpalatable and oppressive land regulation'[134] which subsequently resulted in the fact that up to 1876 it was estimated that only about half of Malacca's legitimate land revenue reached the treasury.[135] Such popular but so far quiet vexation reached its climax

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131 Kernial Singh Sidhu and Paul Wheatly (eds.), *Melaka: The Transformation of a Malay Capital c1400-1980*, vol. 1, Oxford University Press, Kuala Lumpur, 1983, p. 249.

132 See P.J. Begbie, *The Malayan Peninsula*, 1834, reprint, Kuala Lumpur: Oxford University Press, 1967, pp. 384-385.

133 Some Malaccans in Merlimau and the surrounding areas were even reported to have deserted their holdings on account of 'oppressive taxes and land regulations.' Hill, *op. cit.*, p. 74, citing from the *Malacca Administration Report of 1886.*

134 Hill., *ibid.*, quoting from Blundell's 'Notes of the History and Present Condition of Malacca,' *Journal of Indian Archipelago*, 1848; 2:737.

135 K.S. Sidhu and P. Wheatly, *op. cit.*, p. 262.

when further discontent, this time with the *Malacca Land Customary Right (Ordinance IX of 1886),*[136] which replaced the tenth by a fixed rent erupted into violence in the Jasin district leading to the assassination of the Assistant District Officer. The authority, however, managed to contain the violence and ended further resistance through untiring consultation with the local population. Nevertheless, the *Ordinance* finally succeeded in dramatically increasing land revenue from under $64,150 in 1886 to over $117,000 two years later.[137]

With the exception of the Jasin incident, there were but peaceful passive forms of resistance against the Straits Settlement authority. Never even having to resort to organised resistance, their sheer indifference and foot-dragging[138] response was equally effective in conveying to the authority their deep-seated displeasure and resentments of certain policies, rules or procedures.

In other parts of the Malay States, British intervention and colonial rule were met with relatively more aggressive resistance. The earliest and by far the most significant of all was the Naning resistance of 1831 which took the form of war and lasted for two years. As a matter of fact land or land-related issues[139] were the single most important factor underlining the Naning resistance. As alluded to in the previous chapter there could probably not have been a Naning war had the British authority in Malacca in 1827,

(i) honoured, instead of reneging on its 1801 agreement with the *Penghulu* of Naning over the latter's payment of the tenth of its produce to the Malacca authority;

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136 Introduced on the recommendation of W.E. Maxwell partly to boost revenue. *Ibid.*, pp. 263-264.

137 K.S. Sidhu and P. Wheatly, *op. cit.*, pp. 263-264.

138 For an interesting account of forms of peasants' passive resistance in a Malay state see James C. Scott,*Weapons of the Weak: Everyday Forms of Peasant Resistance*, Yale University, 1985, who described as 'a mutually acceptable terrain of discourse,' the way two parties managed to communicate with each other despite concealing the 'true values' of their intentions. (p. 205).

139 To Andaya, B.W. and L.Y., *A History of Malaysia*, London: 1986, p. 123, 'the war raised controversial issues related to Malacca's land and judicial system.'

(ii) recognised the sovereignty of Naning, instead of erroneously[140] claiming it to be a territorial part of the Dutch cession of Malacca;

(iii) recognised the authority of Dol Said as the *Penghulu* of Naning,[141] and not intervened and sided with Encik Surin in his land dispute[142] with the former.

The war, which inflicted heavy monetary and human losses especially on the British,[143] reflected Malay distaste for outside interference in their customary affairs, as was unfortunately to recur in the Perak disturbance some forty years later. The assassination in 1875 of Resident Birch, within only a year of him taking up the office, marked another chapter in Malay resistance to British direct intervention.

The Pangkor Engagement, forced upon the Malay Rulers in 1874, not only effectively curtailed their power but above all, it subjected them to deep humiliation. Administration of the states, appointment of officers and enforcement of collection of revenues were surrendered to the British, rendering the Sultan as decrepit and powerless individuals. The Malay chiefs viewed the Pangkor Engagement with distrust and suspicion, for the British had also interfered in the very heart of their custom by the former intervening in the Perak throne succession disputes. As a Malay government was regulated by custom and tradition,[144] British direct interference in forcing upon the Chiefs the acceptance of the British-nominated successor to the throne had struck a heavy blow to their pride.

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140 See footnote number 62 in Chapter One of this study.

141 The *Penghulu* of Naning is a customary title conferred on Dol Said under the traditional system of *Adat Perpatih* Naning. It is not penghuluship in the ordinary administrative sense of a head of a *mukim*.

142 The land dispute was too minor an issue to justify colonial intervention. Nonetheless it served as a useful pretext well capitalised on by the British. See °Abdullah Ghazali Zakaria, 'Perjuangan Orang-orang Melayu Naning Menentang Inggeris 1831-32' in *Jernal Sejarah*, Jilid XV, Jabatan Sejarah Universiti Malaya, Kuala Lumpur: 1977/78, p. 12-25.

143 *ANM/SPP/N/1*: 'Documents Relating to Dol Said (The Naning War, 1832).'

144 Emily Sadka (ed.), 'The Journal of Sir Hugh Low, Perak, 1877,' pp. 5-105, *JMBRAS*, Vol 27, Pt. 4 (No. 168), November 1954, p. 11.

What made matters worse was the fact that in the face of their growing impotency, the Perak Rulers and their Chiefs were unfortunate enough to have to contend with a Resident in the person of Birch, someone whom Butcher considered as 'contemptuous of Malay institutions'[145] but described by Gullick as 'a man exalted by a sense of mission.'[146] Birch's stance was emboldened and spurred on by Governor Andrew Clarke's instructions to him to use force if necessary to ensure that revenue collected was destined for the state alone. To achieve that end Birch overzealously resorted to burning down a toll-house belonging to the Panglima Besar and to threatening Raja Abdullah with deposition and exile should the Raja refuse to sign revenue notices.[147]

Birch's proposed imposition of an unpopular household tax [*hasil kelamin*] and his tactless fortitude in attempting to end the prevalent practice of debt-bondage and slavery infuriated many slave-owning Malay chiefs. To this was added his arrogance, for when once warned of Malay plans to kill him, he retorted, 'if one Mr. Birch is killed, ten Mr. Birches will take his place.'[148] His assassination demonstrated to the British that they could not rule without any regard for Malay sensibilities.[149]

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145 Butcher, *op. cit.*, p. 7.

146 J.M. Gullick, 'Captain Speedy of Larut,' pp. 4-103, *JMBRAS*, Vol. 26, Pt. 3, No. 163, November 1953, p. 96.

147 Sadka, *op. cit.*, p. 14. See also C.D. Cowan (ed.), 'Sir Frank Swettenham's Journals, 1874-1876,' pp. 3-147, *JMBRAS*, Vol. 24, Pt. 4, December 1951, pp. 21-28.

148 Gullick, *op. cit.*, p. 96. Even Frank Swettenham during the early part of his service also displayed such boastfulness. A couple of months before Birch's assassination, when warned of imminent disturbance while his boat was cruising along the Perak river and would pass through a certain Chief's custom toll house, he replied that he would still sail and 'hoped' that the Chief would stop and tax him. See Cowan, *op. cit.*, p. 123.

149 Butcher, *op. cit.*, p. 51. At the end of his career Swettenham, devoted a chapter to understanding 'The Malay; His Customs, Prejudices, Arts, Language, and, Literature,', pp. 132-172, in his book, *British Malaya*, London: John Lane The Bodley Head, 1906, in addition to some other of his earlier writings such as 'The Real Malay,' 'Malay Superstitions,' and 'Malay Sports.' See William R. Roff, (selection and introduction by), *Stories and Sketches*, Kuala Lumpur: Oxford University Press, 1967. Similar calls for better understanding of the Malays were also made by Maxwell, *op. cit.*, 'Malay Custom...' and Birch's own son, Ernest who, as Acting Resident to Perak once wrote to the Colonial Secretary on January 6, 1896 that "it is a great recommendation to the Malay mind that a man should be a gentleman, for the Malay race studies courtesy and is quick to distinguish a gentleman and a man who is either a boor or is underbred." *CO 273/212*: 'Mitchell to Chamberlain, Confidential of 7 January, 1896.'

Indeed the Resident's greatest folly was his refusal to try to understand the Malays. His uncompromising resolve which totally disregarded the need for consultation, ultimately resulted in his death at the hands of Dato' Maharajalela's men. With troops deployed from Hong Kong and India, and police reinforcements from Penang and Singapore, the British managed to quickly contain the Perak disturbance, set up a commission of inquiry and brought those involved in the disturbance to trial.

Despite the grim reminder, the British encountered further Malay resistance to their rule. As if contagious, this time it was the turn of the Malays in the east coast states of Pahang, Kelantan and Trengganu. The Pahang uprisings, as the resistance is popularly known, strecthed for four years from 1891 to 1895 with a period of uneasy calm from 1892 to 1894. Problems had been brewing over the issue of lease of large tracts of land to Sayid Muhammad Alsagoff, to Chinese and to European outsiders prior to J.P. Rodger's taking up office as the first Resident to the state in 1888. The Pahang Chiefs were reportedly divided over the matter, over the issue of the tobacco plantation and over the question of the state's coming under British rule.[150]

Rodger's appointments of Magistrates and Collectors infuriated Malay Chiefs who saw in the appointments the displacement of their traditional roles. The administration's offer of allowance did not satisfy the minor Chiefs and caused one of them, Datuk Bahaman to disregard the new authority, to continue collecting taxes in his territory and to instigate his followers to disregard the administration's new land policies and procedures. Bahaman's defiance caused him to lose his allowance but his initial success brought other more influential Chiefs[151] including Tok Gajah and Tok Raja, and their followers to join forces with him to fight the British. Interestingly when forced to fight

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150 Although they were his trusted major Chiefs, the Sultan was also at odds with Maharaja Perba Jelai (Tok Raja) on the issue of payment to be received by the former in return for the land lease, and with Tok Gajah on the issue of the opening up of the tobacco plantation. W. Linehan, 'A History of Pahang,', *JMBRAS*, Vol. XIV, Pt. II, June, 1936, pp. 113-115; Haji Buyong Adil, *Sejarah Pahang*, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1984, p. 255-259.

151 Regretting that the Sultan had been too deeply influenced by the Resident's 'advice' they attempted to incite him to turn against the former, but to no avail. As a result, they joined forces with Bahaman to fight the British. Linehan, *ibid.*, p. 147.

against fellow Malays loyal to the Sultan and the new regime, they withdrew to Kelantan and Trengganu. In Trengganu they were given protection by the highly respected religious leader, Sayyid Abdul Rahman al-Idrus or Tok Ku Paloh, an influential figure in the Trengganu palace.

Inspired by the calls for a holy war[152] against the British, Bahaman, Tok Raja and Tok Gajah returned to Pahang with renewed vigour for the second phase of their resistance. With some 200 Kelantan and Trengganu Malays fighting on their side they gained control of an important government stronghold at Jerai Ampai in Pahang. The rebellion was only crushed when a military expedition led by Hugh Clifford was launched into Trengganu and Kelantan on July 17, 1894.[153] The fall of Jeram Ampai to the government forces and the surrender of Datuk Bahaman ended the Malay resistance in Pahang.

In Kelantan a rebellion against the British took place in Pasir Puteh, a district bordering Trengganu. The peasants, endowed with fertile soil, occupied themselves with growing a variety of agricultural products. Their traditional way of life was, however, interrupted by the establishment of the District Office in 1905. Combined with the all-powerful functions[154] of the District Officer whose presence had been interpreted as having dislocated the power of Engku Besar, the traditional territorial chief of Jeram,[155] the enforcement of a new land system created misunderstanding among the peasantry.[156]

Since his succession as the fifth generation territorial chief of Jeram, Engku Besar

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152 Aruna Gopinath, 'The Pahang Rebellion of 1891-1895,' in *Purba*, No. 6, 1992, p. 45.

153 See Hugh Clifford, 'Expedition to Kelantan and Trengganu,' *JMBRAS*, Vol. 34, Pt. 1, 1961. In addition to obtaining the help of 120 Siamese, the British secured Siamese help in forcing the Sultans of Trengganu and Kelantan to stop aiding the Pahang Malays.

154 As Magistrate, Revenue Collector and Land Officer all-in-one.

155 A sub-district of Pasir Puteh.

156 Ibrahim Nik Mahmood, 'The To' Janggut Rebellion of 1915,' pp. 62-85, in W.R. Roff, (ed.), *Kelantan: Religion, Society and Politics in a Malay State*, Kuala Lumpur: Oxford University Press, 1974.

had enjoyed the allegiance of his people and like other such chiefs, he drew his income mainly by levying taxes on the produce of and the goods traded in the area. All along he had regarded the district as a source of personal fortune, a right steeped in tradition. The first District Officer of Pasir Puteh, a Singaporean, happened to be highly efficient. Under him the district revenue increased in parallel with increasing land alienation, and encouraging trade and farming, to such an extent that within a few years of its foundation the new Pasir Puteh town bloomed at the expense of Jeram. In addition to being sidelined and deprived of his 'traditional right,' under the new system of administration the Chief's prerogative to tax collection was taken over by the Government-appointed *Toh Kweng*s, whose strict enforcement did not permit much possibility for tax evasion.[157]

In 1912, another District Officer, also a Singaporean and known to be a strict disciplinarian, cracked down on crimes and harshly enforced the tax regulations. So, when in 1915 a new system of fixed land rent was introduced, it created misunderstanding and aroused opposition, which culminated in its successful boycott masterminded by Engku Besar with the help of one Haji Mat Hassan or To' Janggut of Nering. Open revolt against the authority began on April 29 when an attempt by a policeman to summon To' Janggut for questioning ended in the former being stabbed by the latter. With popular support behind him To' Janggut launched his open defiance of the authority[158] and set out on a march towards Kota Bharu.[159]

On May 12, the Sultan issued a Notice demanding the surrender of the rebel ringleaders within seven days failing which their houses would be burnt and their property confiscated. This was followed by the Sultan's offer of a reward. After an apparent lull from May 15, the Government on May 23 decided to fine every household in Pasir Puteh

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157 Ibrahim Nik Mahmood, *ibid.*, p. 70. The 1905 tax enactment provided for the liability to imprisonment or fine or both of anyone, without exception of even the ex-territorial chief himself, who failed to comply with the requirements.

158 Alias Mohamed, 'The Advent of Malay Nationalism and the Defence of Islam in Kelantan,' pp. 275-283, *Islamika IV*, Monograph, Kuala Lumpur: Gateway Publishing House, 1991, p. 276.

159 In fact, in Kuala Krai the District Officer too was threatened with revolt by some 300 men but with the help of the local police he managed to dispel them. Ibrahim Nik Mahmood, *op. cit.*, p. 82.

for their defiance of the authority. This sparked off another fresh assault on the district by To' Janggut and his men. In the ensuing battle To' Janggut was killed and with it the nearly month-old rebellion came to and end.[160]

The new system of land administration which fuelled the To' Janggut rebellion had had the same effect in the neighbouring state of Trengganu. In 1921 the Government planned to put under the administration of a Commissioner the areas stretching from Kuala Telemong to Hulu Telemong or Kuala Brang. In the same year it decided to implement new regulations regarding the opening up of lands. Under this regulation, individuals were required to obtain passes from the Land Office subject to payment of a certain sum. Apart from that they were not allowed to cut down trees below seven years.[161] 43 people were issued with summonses, brought before the Magistrate's Court and fined. Haji Abdul Rahman Limbong, a respected religious teacher, who since 1922 had had the licence of a Pleader, represented the peasants. He argued on the premise that since land is the right of Allah, the state has had no right to impose a land tax.[162] The Government having failed to prove the land in dispute as a State land, lost the case and failed in its subsequent appeal to the High Court in the same year.

During the protracted court case, there were other intervening activities signifying the people's defiance of the authority.[163] This included anti-vaccination campaigns,

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160 Other rebel leaders who escaped to Trengganu and Siam were later arrested and executed whereas Engku Besar who fled to Siam died there a few years later. *Ibid.*, 84.

161 Timah Hamzah, *Pemberontakan Tani 1928 di Trengganu: Satu Kajian Ketokohan dan Kepimpinan Haji Abdul Rahman Limbong*, Kuala Lumpur: Dewan Bahasa dan Pustaka,1981, pp. 64-65.

162 In a separate case involving 508 peasants who had not paid for their passes, Haji Abdul Rahman took the opportunity to clarify that defiance of the authority was not their intention. He argued that they were willing to pay even the land tax provided it was imposed on them in the form of *zakāt* in accordance with Islamic law.

163 The State Council had earlier in 1924 and 1927 passed the *Land Settlement Enactment* which, apart from providing for the settlement of land, the establishment of boundary marks and the issuance of permanent document of titles, also stipulated that all lands in the state were liable to payment of rent. Prior to the introduction of these legislations, resentments were already brewing among peasants who experienced insecurity of their land tenure. Due to widespread abuse of land concessions and their leases by the ruling class, in the late 1920s, the Commissioner of Land and Mines, G.A.C. de Moubray, estimated that as many as 30,000 peasants in the Trengganu River system alone, who had

incitation led by one Haji Musa Abdul Ghani Minangkabau calling on the people not to pay government taxes, and clearing without permit of forest land spearheaded by one Tok Janggut.[164] In 1925, in what was known as the Telemong Affair, peasants were mobilised to clear and work on land belonging to one Tengku Nik Maimunah in Telemong. It was from here that 'anti-government movement changed from passive refusal to a more aggressive posture'[165] when in April 1928, thirty Malays were arrested by the District Officer of Kuala Brang for felling trees without licence.[166]

On 7 May, 1928 between 1,000 to 3,000 peasants gathered at Kampung Buluh in the Sultan's meet-the-people session. However despite pleading against the payment for passes and the land rent, the Sultan apart from pardoning those accused of defying the new land regulations, refused to consider their appeals. The peasants, utterly disappointed, remained dissatisfied. Hardly a fortnight later, on 19 May, 600 men seized control of the District Office and two days later 200 men attacked government installation at Kampung Telemong. The trouble in which Tok Janggut and ten other peasants were killed soon spread to other parts of Trengganu. The Government, however, managed to suppress the uprising,[167] sentenced a number of its ringleaders to between five to fifteen years jail in Singapore, and exiled Haji Abdul Rahman Limbong (who finally surrendered)

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inherited and occupied their 'tanah tebang' (felled lands) or 'tanah waris' (inherited land), were in fact, living in chop areas and thus became tenants virtually overmight. Peasants of Alor Limbat were even hostile to their ruler, Sultan Sulaiman, who had a 7,000-acre *cap* which encompassed their 'tanah waris.' See Shaharil Talib, *op. cit.*, pp. 135-138.

164 Not the same To' Janggut of the Pasir Putih rebellion.

165 Shaharil Talib, *op. cit.*, p. 155.

166 In his report, W.M. Millington advised the government to be cautious over the implementation of new land legslation so as not to infringe the principles of Mohammedan law. *T/PBB/2*: 'Annual Report of the British Adviser: Trengganu for the Year 1927, by W.M. Millington, Acting British Aviser, 1928.'

167 In his Annual Report for the years A.H. 1346-1347 (1927/28-1928/29) A.J. Sturrock, the British Adviser to Trengganu reported manifold increases in land rent collection in Besut and Kuala Trengganu, from $6,100 to $21,900 and from $2,000 to $21,700 respectively over the same 1927/28-1928/29 period. *ANM/T/SUK2*: 'State of Trengganu (Unfederated Malay States) - Colonial Report - Annual, June 1928-1June 1929', p. 6.

to Mecca.[168] In the absence of an inspirational leader, the peasant uprising in Hulu Trengganu was brought to an end and with it the last of such popular resistance,[169] only to be succeeded by pan-Malayan political agitation for independence.[170]

In retrospect, with the exception of passive resistance in early Penang and Singapore of early settlers, prospective agriculturists and speculators, most of whom were Chinese and Europeans, other forms of resistance put up by the Malays, ranging from the Jasin discontent to the Naning War during the early part of the last century, were manifestations of their deep-seated suspicions of British threats to their custom and religion. Apart from other grievances, British 'intervention' in matters affecting land stands out as the strongest undercurrent. New land legislations not only deprived many Malay Chiefs of their personal fortunes and dislocated them from their positions of power and influence over their followers, but also proved unpopular with the ordinary folks who saw in the legislation another form of oppresion, curbing the survival of their simple livelihood on land and imposing on them heavier burdens of taxation totally alien to their customs and culture. To the Malays who had been Shafi'ite since the Malacca Sultanate, Islam has always been an integral part of their custom. The slightest encroachment on their customary practices would, to a certain extent, signify imminent challenge to their religious traditions.

Of a century of sporadic Malay resistance from Jasin to Hulu Telemong, only in the Pahang and Trengganu uprisings was the relevance of Islam significantly stated.

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168 Shaharil Talib, *ibid.*, p. 161.

169 Whilst admitting the non-participation personally of Haji Abdul Rahman in the distrubance, Sturrock claimed that the 'poor, lazy and underfed' *raiyat* were 'ignorant of the reason for the quarrel with Government and accepted blindly the counsel of their leaders...' Ironically, despite his depiction, Sturrock admitted that after the disturbance it was also the same 'lazy' *raiyat* who constructed a road from Kuala Brang to Kuala Trengganu. *ANM/TSUK, op. cit.*, pp. 12-13.

170 Shaharil, *op. cit.*, and Hill, *op. cit.*, both regarded the Trengganu uprising as the most significant of all the Malay resistance for its overall impact and for all the ingredients it had of the making of an agrarian revolt, ranging from the anticipation for better immediate reforms to messianic hope and millenarianism. See Sartono Kartodirdjo, *Protest Movements in Rural Java: A Study of Agrarian Unrest in the Nineteenth and Early Twentieth Centuries*, Kuala Lumpur: Oxford University Press, 1973.

Whilst alien legislation and oppressive land taxation appeared as main grievances against the British in Malacca and Kelantan, loss of prestige, dislocation from power and loss of revenue of territorial Chiefs appeared to be more of the case in Naning, Perak, and Pahang.[171] But it was only in the second phase of the Pahang rebellion that the Trengganu-inspired cry of holy war, and in the Trengganu uprisings itself afterwards, that calls to disobey 'a government that had lost its moral mandate to rule'[172] stamped their religious marks. It was in the *ʿulamā*-led Trengganu uprisings that Islamic religious overtures made their strongest impact when the key *ʿulamā* figure, Haji Abdul Rahman Limbong declared in the clearest terms in Court that the peasants were not against the payment of land tax provided that it was in the form of *zakāt* and that therefore, since land is the right of Allāh, they disputed the state's right to impose a land tax.[173] In other words, the Hulu Telemong uprising represents the misapprehension of Trengganu Malay peasants against the overwriting of their prescribed religious law (in respect of *zakāt* obligation) by secular civil legislations. Their actions stemmed from their conviction of a religious law and they disputed the 'moral mandate' of their own ruler in whom they were no longer prepared to place their trust.

Under persistent pressures and being weak, Malay Rulers and Chiefs succumbed to the dictates of British colonial officials. To a certain extent this was due to their fear for their own individual survival. In accepting British Residents and Advisers they realised that they were being sandwiched between loyal subjects and colonial masters. This explains the helplessness in their reluctant acquiescence to the Pangkor Engagement and the Anglo-Siamese Treaty of 1909, thus confining the relevance of their presence to

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171 The factors though, overlapped one another and are not as clear-cut as are hereby simplified.

172 Shaharil, *op. cit.*, p. 144.

173 In one striking similarity in North America in early 1690s, Reverend Higginson, in his representation against British colonial officials (which finally marked the doom of the quit rent system in the New England Colonies of Massachussetts, Plymouth, Connecticut and Rhode Island) argued that the people of Massachussetts derived their title to the land from God "according to His grand charter to the sons of Adam and Noah." Beverly W. Bond Jr., *The Quit-Rent System in the American Colonies*, New Haven: YaleUniversity Press, 1919, pp. 48-50.

matters of custom and religion only. Even in this, they had to heed colonial 'advice'.[174]

Malay resistance failed due to a number of factors. In the face of strong British military might, sporadic and uncoordinated resistance would not stand much chance. More so disunity was obvious among aspiring traditional Chiefs. To this was added the discomforting fact that in the East Coast states resistance was seemingly also in opposition to their own Sultans. Despite their Sultans' hopeless positions in the face of their respective Residents and Advisers,[175] open defiance against one's Ruler smacked of rebellious disloyalty which is very uncharacteristic of a Malay. Finally, failure of the Malay resistance to garner widespread support is also attributable to the simple fact that the peasants, having themselves suffered the bitter experience of repressive Rulers and their Chiefs,[176] were probably not convinced enough of their own cause.

No doubt the British political bureaucracy[177] had indeed introduced a better and more systematic form of administration. They were also instrumental in the economic and socio-infrastructural development of the country. But in the process, they wrecked Malay traditional institutions and introduced new fears into the Malays in the form of potential threats from new immigrants.[178] Yet when compared to some developing countries where

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174 Robert O. Tilman, *Bureaucratic Transition in Malaya*, North Carolina: Duke University Press, 1964, despite estimating that the Pangkor Treaty provided the British with 'an aura of legal sanctity to [their] emotional bias' (p.27) of being the paternal protector of the Malays, also emphasized that with the strengthening of the then existing hierarchy of power, it would be 'a most serious error to suppose that indirect rule preserved the traditional society.' (p. 57).

175 In order to ensure the survival of their own thrones and the security of their allowances and pensions.

176 See Hugh Clifford's [in Kratoska, (ed.), *op. cit.*] descriptions of the executions, based on unwritten laws, carried out by 'the barons of Pahang' against their subjects. Generally, a chief did pretty much as he pleased so long as he professed allegiance to the Ruler and gave a portion of the taxes he collected to the Ruler. R.S. Milne, *Government and Politics in Malaysia*, Boston: Houghton Mifflin Company, 1967, p. 14.

177 This was Mavis Puthucheary's description of the British Colonial Service in Malaya (*The Politics of Administration - The Malaysian Experience*, Kuala Lumpur: Oxford University, Press, 1978, p. 24).

178 Butcher, *op. cit.*, p. 22, whose contention that in their political consciousnessness the Malays were more concerned to protect their interests in relation to the Chinese than to bring an end to British rule, is debatable. After all, the influx of the Chinese and Indians was triggered by the British immigration and labour policies. So, even if his contention were true, the 'new fears' had all along

independence brought about complete demolition of a distinct colonial legacy and total politicization of the district administration, in Malaysia, even the position of the colonial District Officers had never been a public issue. Instead the continuity of administration and political system was not marked by reaction against colonial institutions.[179]

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been British-orchestrated, and this therefore, does not spare the colonialists from blame.

179 As observed by J.H. Beaglehole, 'The District: Some Aspects of Administration and Politics in Malaysia,', *Journal of Overseas Administration*, pp. 184-198, Vol. XII, No. 4, October, 1972, p. 195.

CHAPTER THREE

THE STATE AUTHORITY: ITS JURISDICTION OVER LAND MATTERS AND LAND RENT RECOVERY PROCEDURES.

The Federal-State Distribution of Competence.

The political and economic viability of a regional government within a federal system largely depends on the constitutional arrangements and the dynamics of its relationship with the central government. In the case of Malaysia, the distribution of competence of both levels of government is enshrined in the Federal Constitution.[1] This distribution is achieved through a three-list system under Article 74 of the Constitution which provides for exclusive federal powers (manifested through the Federal List), exclusive regional or state power (the State List) and, concurrent powers (the Concurrent List).[2]

Even though the states hold residual powers to legislate matters not enumerated in any of the three lists, these lists themselves are so comprehensive that the provision on residual powers seem of no practical consequence for the state.[3] In theory, the states hold absolute jurisdiction over matters affecting Islamic religious affairs, land tenure, agriculture and forestry, as well as local government. In practice however, in line with the recommendation of the Constitutional Commission, the federal government still wields extensive powers with right to introduce legislation to procure uniformity of law and policy over those matters,[4] apart from the right to emergency powers and having almost

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1 Though arguing that Malaysia would have been better suited by a unified constitution, G. F. Sawer, in his *Modern Federalism* (London: Alden and Mowbray Ltd.,1969, p.50) attributed Malaysia's 'federation' to the dynastic history of the Malay States and the varying courses taken by earlier British settlements.

2 Article 74(1)-(4) and the Ninth Schedule, *Federal Constitution*, Kuala Lumpur: International Law Books Services,1991.

3 R.S. Milne, *Government and Politics in Malaysia*, Boston: Houghton Miffin Co.,1967, p. 77.

4 *Report of the Federation of Malaya Constitution*, Kuala Lumpur: Government Printers, 1957, p.3.

complete control over sources of revenue and financial matters.[5]

Relations between federal and state governments regarding the distribution of their legislative powers are spelt out in seven Articles under Chapter One of the Constitution while nine main provisions affecting land are outlined under Chapter Four. Land transactions involving the states and the federation are specifically referred to in four Articles.[6] In addition to separate Articles dealing with Malay Reservations, with customary lands in Negri Sembilan and Malacca, and with Malay holdings in Trengganu, Article 87 deals with land valuation while another Article refers to the composition and operation of a National Land Council.[7]

With the exceptions of the Federal Territories of Kuala Lumpur and Labuan which are directly federal government-administered, the powers of the states over land, encompass:[8]

(a) land tenure, landlord-tenant relations, land registration, colonization, land improvement and soil conservation, rent restriction;

(b) Malay reservations, and native reservations for the states of Sabah and Sarawak;

(c) mining leases and certificates, and prospecting permits and licences for

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5 The centralizing tendency of the Constitution is evident in the fact that State governments can borrow from outside the federation only with the consent of the federal government. At the same time, federal allocations of the proceeds of taxes and other forms of financial assistance to the states are implemented through elaborate treasury procedures not altogether excluding political considerations. B.H. Shafruddin's 'An Episode of Centre-State Relations in Peninsular Malaysia: the Endau-Rompin Case' in *The Journal of Commonwealth and Comparative Politics*, Vol. 23, No. 2, July, 1985, pp. 140-156. Gayl D. Ness, *Bureaucracy and Rural Development in Malaysia A study of Complex Organization in Stimulating Economic Development in New States*, Los Angeles: University of California Press, 1967, despite giving a very positive evaluation of development efforts, also describes political discriminations by the Federal Government against the State Governments of Trengganu and Kelantan in the 1960s. See also Milne, *op. cit.*, pp. 81-82, on the politics of the FELDA [the Federal Land Development Authority] land scheme in Kelantan.

6 *Op.cit.* Articles 83-86 deal with acquisition, reversion, reservation and disposition of land, to wit, for federal purposes. Applicability of the earlier provisions to states not having a ruler such as Penang, Malacca and the Federal Territory is facilitated by the inclusion of Article 88.

7 *Ibid.*, Art. 91.

8 *Ibid.*, p. 217, Article 74, Item Two, List II - State List of the Ninth Schedule, to be read in conjunction with Article 95B(1)(a).

mining;

(d) land acquisition;

(e) land dealings; and

(f) Escheat and treasure trove excluding antiquities.

Two other relevant aspects of land use are enumerated under the Concurrent List, namely matters related to town and country planning, and rehabilitation of mining land.[9]

Powers of the State over Land.

Article 74 defines the States' power to make laws in respect of matters not clearly dealt with in the State List or the Concurrent List so long as the exercise of these powers does not infringe upon matters 'in respect of which Parliament has power to make laws.'[10] In so far as land is concerned, the Article empowers the States to formulate their own policies, to make and enforce land regulations, to appoint officials to administer and execute them, and to detail the application of rules and administrative procedures. Chapter II of Part II of Division I of the *Code* further elaborates and facilitates the application of these provisions.[11]

Under Section 11, the State Authority, subject to notification in the *Gazette*, is empowered to divide the territories of the State into districts, sub-districts and *mukim*s, to vary or alter their respective boundaries, and to declare any area of the State to be a town or village.[12] To enable the machinery of land administration to function, Section 12(1) provides for States to appoint a State Director of Lands and Mines (after this, the

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9 *Ibid.*, pp.220-221, Items 5 and 9 under List III - Concurrent List of the Ninth Schedule.

10 *Op. cit.*, The *Constitution*, Art. 77.

11 The *Code* which comprises thirty-five Parts and thirteen Schedules with 447 Sections in six main Divisions is one of the most elaborate Acts of Parliament. Chapter II of Part II of Division I dealing with 'Powers of the States and of State Officers' consists of eight sections [Sections (11)-(18)].

12 Not exactly in the ordinary sense of a 'town' and a 'village' but ones defined based on land administrative criteria. Of almost similar dimension is the difference between the boundaries of an 'administrative district' as against a 'police district', and that between the designated 'administrative *mukim*s' and the gazetted 'land administration *mukim*s.'

State Director) and other State officers. These officers may include a Registrar of [Land] Titles (after this, the Registrar) and a Director of Survey as well as their respective deputies.[13] Of critical importance is the appointment of district Land Administrators and their assistants, survey officers and settlements officers[14] to exercise the powers and perform the duties under the *Code*.[15]

Section 12(3) outlines the duties of the State Director as one who shall:

(a) be responsible to the State Authority for the due administration within the State of the provisions of the *Code*;

(b) act in accordance with the direction of the State Authority;

(c) have all the powers of a Registrar [of Land Titles] and a Land Administrator;

(d) exercise general control and supervision over the Registrar and other [land] officers 'other than [the] Deputy Director of Survey and other Survey Officers...'[16]

In addition, Section 15(1)(a)-(g) conferred upon the State Director other general powers related to legal and technical procedural matters pertaining to operational tasks, while Section 13 enabled the delegation, by notification in the *Gazette*, of the power of the State Authority to the State Director, the Registrar and to any Land Administrator or other land officers to perform or exercise the duties and powers under the *Code*. However, the State Authority still reserves the power to make rules, to dispose of any law in special circumstances, and to exercise under Section 13(iii) the power or perform the

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13 With the exception of the Survey Department, in the States of the former Unfederated Malay States, senior posts up to the levels of Assistant District Land Administrators, Assistant Registrar of Land Titles and Assistant Director of Lands and Mines were filled by officers of the respective State Civil Service whereas in the rest of the other States, including Perlis, these were filled by Federal officers seconded to the State Administrations. The Survey department being a Federal Department, in both circumstances, the posts were always filled by Federal officers.

14 Subordinate State officers directly responsible to the district Land Administrators.

15 Section 12(2) sub-section (4) specifies that these officers shall each have a seal of office, while Section 12(5) testifies that every Assistant Land Administrator shall be deemed to exercise the powers and perform the duties of a Land Administrator. Unless otherwise qualified this forms the general rule.

16 Section 12(2)(d). This power is to be solely exercised by the State Director of Survey.

duty in any case 'where it appears to the State Authority expedient to do so'.

The State Director is also duty bound to represent the State Authority in any action, suit or proceeding brought by or against it relating to;

(a) State land;

(b) any contract concerning land to which the State Authority is a party;

(c) any trespass to, or other wrong committed in respect of land;

(d) the recovery of any item of land revenue, or any instalment thereof; or

(e) the recovery of any fine, or the enforcement of any penalty, under the *Code*.[17]

Whilst Section 17 deals with the less important issue of empowering the State Authority to require the proprietor of any alienated land or the lessee of State land to trim, fell or remove any tree from the land, and Section 18 enables the State Director, the Registrar or any Land Administrator to consolidate notices, order or notifications, Section 14 amplifies the crux of the power of the State Authority, to make rules[18] with respect to:

(a) the mode in which applications for State land are to be made;

(b) the issue of temporary occupation licences and permits;

(c) the control, management and leasing of reserved land;

(d) the sale by auction of land under the *Code*;

(e) the rates of rent and premium to be calculated;[19]

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17 Section 16(1) and (2).

18 As an example, these rules, updated and amended accordingly, determine specific procedures, rates and *modus operandi* of payment of land revenues and other related office fees to be adhered to by the Land Offices.

19 For example, while Section 14(1)(e) of the *Code* interprets the proviso as '(being rates per hectare or other lesser unit of area) at which the rent to be reserved on, and the premium (if any) to be charged in respect of, the alienation under [the *Code*] of land of any class or description....' Section 22 (Rates of Annual Rent) of the *Pahang Land Rules, 1986*, determines the actual annual rent payable to the State Authority of the various types of alienated land (whether 'town' or 'village' or 'country' land) and their categories of use (whether for 'building', 'industry' or 'agriculture'), such as below:

'(A) TOWN AND VILLAGE LAND:
(1) Category Building-
(a) Residential
$22.00 per 100 square metres or part thereof subject to a minimum rent of $60.00 per title.

(f) the payments and other incidents of licences and permit issued;

(g) the fees to be paid in connection with any matter arising under the *Code*;

(h) the scale of costs for enquiries;

(i) the details of places and authorised collectors for payment of any item of land revenue;

(j) the collection, remission, rebate, payment by instalments or deferment of payment of any item of land revenue;

(k) the powers and duties of [land] officers; and

(l) all procedural and other matters required to be done or permitted to be prescribed out of necessity or of convenience for carrying out or giving effect to the provisions of the *Code*.

Powers of the Federal Government.

Although as a State matter the power to administer land is vested in the State Authority, the *Constitution* reserves the right of the Federal Government to make laws with respect even to any matter in the State list for the sake of implementing any agreement, treaty or convention affecting States in the Federation and for promoting uniformity of law between two or more States or if so requested for Federal intervention by any of the State's legislative assemblies.[20] Article 76(4) stipulates that

> 'Parliament may, for the purpose only of ensuring uniformity of law and policy, make laws with respect to land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases and charges in respect of land, easements and other rights and interest in land, compulsory acquisition of land, rating and valuation of land, and local government...'

(B) COUNTRY LAND:
(3) Category Agriculture-
(a) Rubber and Oil Palm-
(ii) Above 4 hectares to 40 hectares $35.00 per hectare

Provided that where the land under category (3)(a) above is within Malay Reservation area the rates of rent shall be at $22.50 per hectare.'

Note: '$' denotes the Malaysian currency now called the *Malaysian Ringgit* and denoted as RM or MYR (as against the previous 'dollar' currency).

20 *Op. cit.*, the *Constitution*, Art. 76(1).

The power of the Federal Government to influence land policy and administration in the States is provided for by a mechanism set up under Article 91(1) of the Constitution, concerning the formation of the National Land Council. This body comprises a representative from each of the thirteen States[21] and not less than ten members representing the Federal Government, and is chaired by a Minister.[22] In addition to providing advice and consultation to both levels of Government 'relating to the utilization of land or in respect of any proposed legislation dealing with land or the administration of such law', Article 91(5) deems it

> '...the duty of the National Land Council to formulate from time to time in consultation with the Federal Government, the State Governments and National Finance Council a national policy for the promotion and control of the utilisation of land throughout the Federation for mining, agriculture, forestry and any other purpose, and for the administration of any laws relating thereto, and the Federal and State Governments *shall follow the policy so formulated*.'[23]

Complementary to Sections 11-18, 'Powers of the Federation and of Federal Officers' are provided for under five Sections of the *Code*.[24] Section Six provides for the appointment by the *Yang Dipertuan Agong* of a Director-General of Lands and Mines[25] (after this, the Director-General) to whom the Minister [in-charge of lands] may, by notification in the *Gazette*, delegate his powers and duties. Section Nine declares it lawful for the Minister to notify State Governments and to make enquiries with regard to the implementation of policy or the adoption of advice of the National Land Council. He is also empowered to order amendment or repeal certain provisions of the *Code*.

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21 Membership of the Council includes representatives from Sabah and Sarawak. By virtue of Article 95E(2) which exempts these States from being bound by policies formulated by the Council, their representatives sit only as observers and are not entitled to vote on any questions before Council.

22 Currently under the chairmanship of the Deputy Prime Minister with the Ministry of Land and Cooperative Development acting as the Council secretariat.

23 *Italics* mine.

24 Sections 6-10 of Chapter 1 of Part 2 of Division 1.

25 This appointment originates from the *Federal Lands Commissioner Ordinance, No. 44 of 1957*. Prior to independence every state had its own Commissioner of Lands and Mines whereas at the Federal level there was the Chief Commissioner of Lands and Mines.

The dynamics of State-Federal collaboration in ensuring the implementation of policies and procedures for the uniformity of laws depends on the felt mutual needs. To discharge his powers as provided for under Section Eight, the Director-General needs to be in good *rapport* with his States counterparts. Other than normal consultations and exchanges of information, he can only inspect records of any Land Registry or Land Office in a State with the consent of the State Director, and, without the latter's concurrence, circulars issued by the Director-General, however desirable under the *Code*, would be rendered ineffective. On the other hand, the State land administration is always in dire need of services and support from another Federal agency, the Survey Department. With respect to technicalities of land settlement and title registration, the performance of State Land Registry and Land Offices is tremendously dependent on this Department. Section 10 of the *Code* empowers the Minister to prescribe:

(a) the procedures of the Survey Department and the powers and duties of the State Survey Officers;

(b) the fees, costs and other sums to be charged for any survey carried out by the Department; and

(c) the conditions and authorities with regard to variation or remittance of fees, costs or other sums to be charged involving survey.[26]

The District Land Administration.

With the exception of practice in the State of Johore, State District Officers, as chief administrators in their respective localities, are gazetted as district Land Administrators,[27] empowered under Section 12 of the *Code*.[28] In theory, the district Land

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26 Sub-section Two of Section 10 specifies that though these constitute items of Federal revenue, sums chargeable in connection with surveys carried out by the Survey Department 'shall nevertheless be payable in the first instance to the State Authority.' In other words, in this respect, while the Federal agency performs survey for a State Land Office, the State Land Office in turn, helps collect for the Survey Department the payable sums charged for the work.

27 Prior to 1982, the designation was Collector of Land Revenue, a nomenclature reminiscent of the past and first introduced by the British colonial administration. The change in nomenclature is significant. The designation, Collector of Land Revenue, betrays the spirit of earlier colonial administration giving special attention to land as a major revenue generating source. In part land revenue was expected to help finance the administration. In 1985 the designation was changed to District Land Administrator, signifying the widening of the scope of responsibility shouldered by officers of land administration in line with rapid development of the country. In1994, 'District' was

Administrator is responsible to the State Director who is the supreme officer in-charge for 'the due administration [of land] within the State'. In practice, however, the district Land Administrator dispenses his powers and duties under the *Code* quite independently of the State Director (see next page for the organizational chart of land administration).[29]

Wide-ranging powers bestowed by the *Code* upon officers of the land administration while protecting them in the performance of their duties,[30] also demand of them a high degree of precision in their execution. Failure of a Registrar of Land Titles or a district Land Administrator, for whatever reasons, to conform to exact details of legal requirements of the *Code*, may render the entire exercise of their powers and duties null and void.

Under the system, land administration business in the State is performed at two levels, namely, in the Office of the State Director and in the District Land Offices. The State Director is normally assisted by a Deputy Director, a number of Assistant Directors

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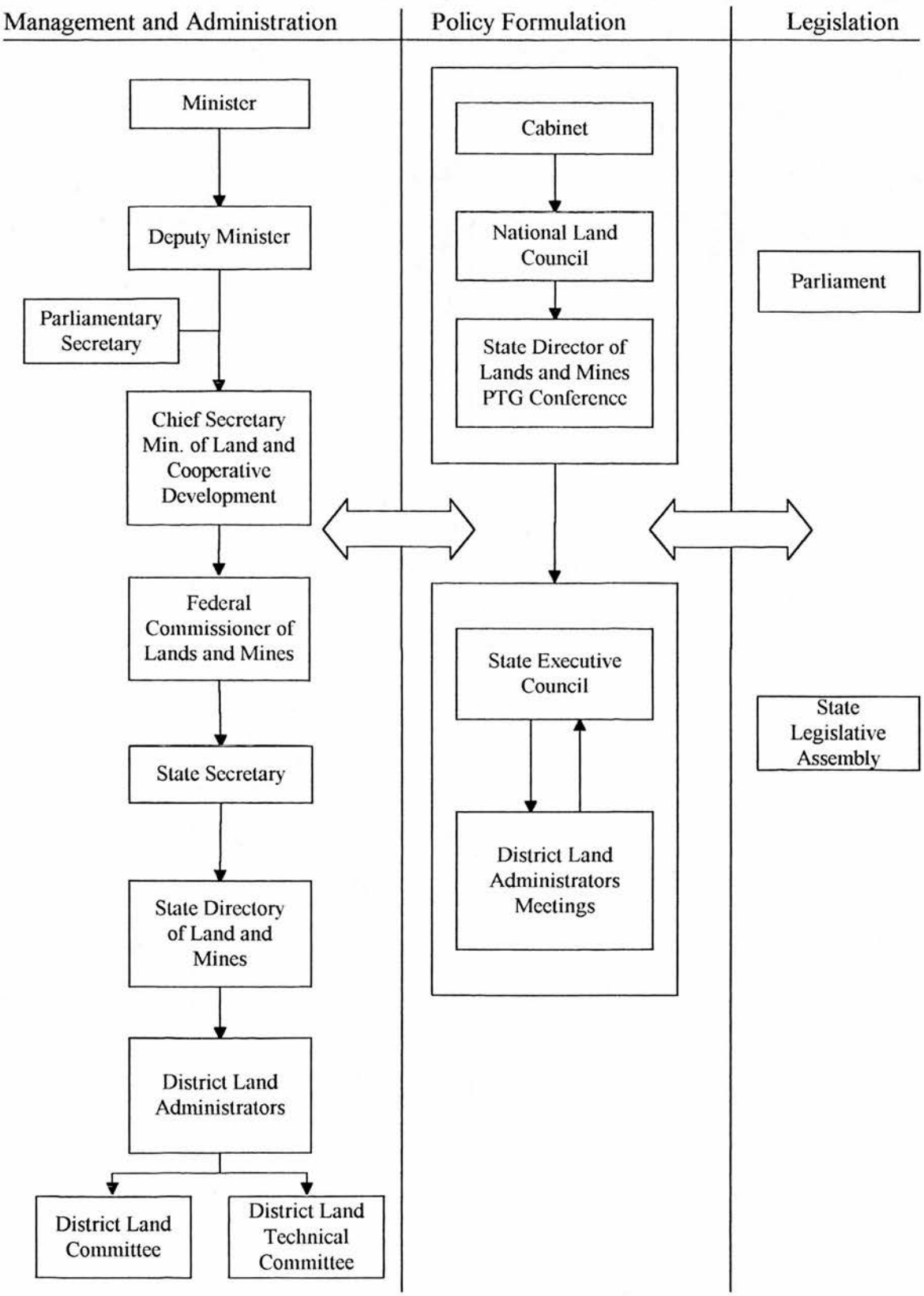
dropped from the nomenclature leaving the title only as 'Land Administrator'.

28 Johore adopts her own peculiar system which totally separates the posts and duties of District Land Administrator (or previously the Collector of Land Revenue) from that of District Officer. The District Officer retains his status as chief administrator in the district concentrating on purely developmental matters. The responsibility for land administration is a separate jurisdiction of the district land Administrator who is independent of the District Officer. The District Office and the Land Office of the district are two separate institutions. Whether or not the Land Office should be an integral part of the District Office, and the implications of structural arrangements on the efficiency of land administration, was a subject of debate by the Federal Commission on Land Administration in 1957, resulting in two of its three members recording their differing views from the Chairman, Mr. W.L. Payne. See Minutes of Dissent by Mr. C.N. Chandra (pp.68-74, particularly paras 10-18) and by Mr. A.P. Mitchell (pp.75-77 especially paras 3, 4, 6 and 12) who argued for the case of a separate Land Department in *Report of the Land Administration Commission*, 1957, Kuala Lumpur: 1958.

29 This position is seen more clearly whenever the district Land Administrator assumes his quasi-judicial role as Arbitrator in proceedings involving cases of foreclosure and sales of land (under Sections 260 - 269 of the *Code*), acquisitions of land (under *The Land Acquisition Act, 1960*), and distributions of inheritance(under *The Small Estates Distribution Act, 1955*). In these respects, the District Land Administrator exercises the powers of the Court and where his magesterial jurisdictions end, the High Court takes over. Even in cases of appeals or other legal proceedings thereafter, it is the Land Administrator himself, and not the State Director, who will be liable in Court.

30 Under Section (22) of the *National Land Code*, 'No officer appointed [under the *Code*]...shall be liable to be sued in any civil court for any act or matter done, or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under this Act.'

Chart 1 : Land Administration Organization in Peninsular Malaysia



Source : Figure 6.1 in Nik Mohd Zain bin Haji Nik Yusof, 'Land Tenure and Law Reforms in Peninsular Malaysia,' Ph.D. Dissertation submitted to the University of Kent, 1989 (Unpublished).

and the Registrar who heads the Land Registry Office.[31] Whereas the authority of the State Director, his deputy and assistants, and the Registrar are gazetted as state-wide Land Administrators capable of exercising their jurisdictions throughout the State, that of the respective district Land Administrators and their assistants are confined within the specific boundaries of their own districts.

As head of the District Land Office, the Land Administrator is responsible for:

(a) land disposal,[32]

(b) land demarcation,[33]

(c) land registration and dealings,[34]

(d) collection of land revenues,[35]

(e) enforcement,[36]

(f) foreclosure and sale of lands,[37]

(g) distribution of inheritance,[38]

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31 The Deputy Director with the help of Assistant Directors is assigned to general land administration of the State including acquisition of land in the State for public purposes, whereas the Registrar together with his Assistants hold specific responsibilities with regard to title registrations and conveyances.

32 Preparing papers for consideration by the State Authority or the District Land Committee, and implementing decisions of the above pertaining to alienation of land, granting of permits for the extraction and removal of rock materials, or of licences for temporary occupation, as well as, leasing or reserving of State lands.

33 Conducting physical investigation of land, determining boundary marks, certifying boundaries of existing land titles, and, surveying and demarcating of land in preparation of titles.

34 Maintaining records of land ownership, registering of new titles, replacing old titles for the new, engrossing of memorials on titles for any acquisition, reservation, foefeiture, estate distribution, and, updating other dealings and non-dealings transactions.

35 Including the payment of premiums, annual quit rents, survey fees and other related office fees as detailed in the respective *State Land Rules*.

36 Implementing provisions of the *Code* related to breaches of conditions of alienations, permits and licences, taking actions against illegal occupation of State lands and illegal removal of rock materials from both alienated and State lands, and prosecuting the offenders in Court.

37 As a quasi-judicial officer of the Court, he receives application for foreclosure and sale of lands, holds enquiries and hearings, arbitrates for settlement of debts or conducts public auctions, issues certificate of sales (and collects sales commission for Land Office) or refers to the High Court.

38 Receiving applications for small estate distribution, holding enquiries and hearings, and issuing orders for distribution.

(h) land acquisition,[39]

(i) general administration.[40]

The National Land Code and State Land Rules.

The formulation and implementation of the *National Land Code* (Act 56 of 1965) with effect from 1 January, 1966 was a significant landmark in the history of land administration in modern Malaysia. As a substantial piece of legislation, it provided the first ever uniform land legislation applicable throughout the Federation with the exception of Sabah and Sarawak.[41] With peculiar issues of the Malacca and Penang land titles resolved,[42] the Minister when presenting the National Land Code Bill in Parliament, underlined the hope and confidence that the new *Code* would present a clear-cut system of land tenure avoiding the confusions of the past and incorporating new provisions adaptable to the needs of socio-economic change and development of the nation.[43]

In cognizance of principles of common law and equity, richness of cultural traditions and customs, and particular local circumstances, the *Code,* though comprehensive, provides a principal saving clause which provides that the *Code* 'shall [not] affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the

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39 Receiving applications for acquisition for Federal or State purposes, investigating suitability of land, gazetting (all stages from notice of intention to certification of possession), holding enquiries and hearings, issuing awards, and preparing new titles.

40 Receiving and processing miscellaneous applications for land development including conversion of categories, change of conditions, partition, sub-division, amalgamation, and surrender of land.

41 Art. 95D excludes the States of Sabah and Sarawak from Parliament's power to pass uniform laws about land or local government thereby exempting them from the applicability of Art. 76 (4) ; and Art. 95E further excluded them from national plans for land utilisation, local government, and the like, thus not requiring them to follow the policy formulated by the National Land Council under Art. 91.

42 The introduction of the *National Land Code (Penang and Malacca Titles) Act (No.2 of 1963)* and the subsequent *National Land Code (Penang and Malacca Titles) Amendment Act (no.55 of 1965)* facilitated the smooth incorporation of Malacca and Penang into the new *Code.*

43 Speech during proceeding of the Dewan Negara (the Federal Upper Chamber) by Abdul Rahman Ya'kub (Minister in charge of Lands) on 9 August, 1965, as cited by Judith E. Sihombing in *National Land Code: A Commentary*, Kuala Lumpur: Malayan Law Journal Pte. Ltd., 1981, p.22.

commencement of [the *Code*].'[44] These previous land laws on which nothing in the *Code* shall have any effect on their operations are enumerated as:

(a) any law still being in force relating to customary tenure;

(b) any law still being in force relating to Malay reservations or Malay holdings;

(c) any law still being in force relating to mining;

(d) any law still being in force relating to sultanate lands;

(e) any law still being in force relating to *waqf* or *bayt al-mal*;

(f) the Trengganu Settlement Enactment, 1356[H];

(g) the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance, 1955;

(h) the Kelantan Land Settlement Ordinance, 1955;

(i) the Land (Group) Settlement Areas) Act, 1960; or

(j) any law still being in force relating to exemptions from the payment of land revenue;

with a further powerful *proviso* that 'in the absence of express provision to the contrary, if any provision of [the Code] is inconsistent with any provision of any such law, the latter provision shall prevail, and the former provision shall, to the extent of the inconsistency, be void.'[45]

As alluded to earlier, the States in exercising their powers to make rules under Section 14 of the *Code* introduced their own land by-laws in the form of the States *Land Rules*.[46] The first *Land Rules* after the *Code* were introduced in 1966[47] complementing

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44 Section 4(1), with a proviso 'that any right, liberty, privilege, obligation or liability existing at the commencement of [the Code] by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provision of [the *Code*].'

45 *Ibid.*, sub-section (2).

46 With the exception of matters concerning the Survey Department, '...the State Authority may make rules generally for carrying out the objects and purposes of ...[the *Code*]...within the State...'

47 Except the *Federal Territory [of Kuala Lumpur] Land Rules, 1975*. See *Land Rules Applicable to the States in Malaysia*, Kuala Lumpur: International Law Book Services, 1990 which contained compilations of the latest *Land Rules* in force as at December, 1989, including those of Sabah and Sarawak. Also included are the *Kedah Provisional Titles (Transitional) Rules, 1967*, the *Land Titles Rules (Malacca), 1966* and the *Land Titles Rules (Penang), 1966*.

the application of the *Code*. The *Land Rules* as a whole are subject to constant review and are amended[48] from time to time either in accordance with periodical revision of rents as provided for under Section 101 of the *Code* (or similar provision under any previous law) or as stipulated in the preceding *Land Rules* itself or as dictated by situational needs. Nonetheless, the annual rent in particular is presently subject to a ten-yearly revision[49] with the last two exercises having taken place in 1984 and 1994 respectively.

Neither the *Code* nor the *Land Rules*, however, constrain the wisdom of the Director-General and the respective State Directors, who may issue their own directives in the form of administrative circulars, some of which reflect on and operationalise the policies of the National Land Council or the State Authority. While the Director-General's circulars issued from time to time are meant as uniform guidelines to established legal judgments, advice and opinions, they also usually contain technical procedures pertaining to daily operations of the Land Registry and the Land Office[50] as well as detailing the applications of certain aspects of the *Code*. The State Director's circulars do the same but are more confined to particular references to the State land policies as embodied in the State *Land Rules*.

Land Revenues.

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48 For example, since their inception the *Johore Land Rules, 1966* had been amended about 40 times up to 1985 and the *Selangor Land Rules, 1966*, 24 times (up to 1988, vide SLN 18/88), the *Negri Sembilan Land Rules, 1966* twice (up to 1987, vide NSLN 4/87) and the *Federal Territory [of Kuala Lumpur] Land Rules, 1975* only once (vide FT(A) 398/1984).

49 Section 101(5)(b) of the *Code*. Initially the first rent revision period was fixed at intervals of not less than thirty years, then reduced to fifteen years and finally ten years. First mention of a thirty-year revision interval period was in the Selangor's 1891 *Maxwell's Code*. As an example, in the case of Johore, following the state's 'Declaration as to the Revision of Rent Notification No. 95 of 1916,'the first such revision was to have taken place immediately after 10 September 1946. J/PU: '(2) Rules and Regulations Issued under the Land Enactment, 1936.' But as a matter of fact, past revisions immediately prior to the *Code* never took place according to scheduled intervals, partly attributed to a number uncertain intervening events including the World War II and the Emergency, and the coming into force of the *National Land Code* in 1966.

50 This was one of the functions of central control inherited from the former Commissioner of Lands for the Federated Malay States. As one of the main methods used to achieve uniformity of interpretation and procedural implementation of the *1928 Land Code* among the member states, apart from being informative and instructive, the Commissioner's rulings were, in some cases, reprimanding [Judith Sihombing, 'Land Law from 1926 to 1966 in the Federated Malay States', in Ahmad Ibrahim and Judith Sihombing, (eds.), *The Centenary of the Torrens System in Malaysia*, Kuala Lumpur: 1989, p.27].

Section Five of the *Code* defines land revenue as 'every sum now due, or which shall hereafter become due, to the State Authority on account of any premium or rent payable in respect of alienated land, or under any licence or permit relating to land, and fees of any kind (including arrears of fees and, notwithstanding that they constitute items of Federal revenue, any fees, costs or other sums payable in connection with the carrying out of any survey by the Survey Department) chargeable under...[the *Code*]...or any previous land law.' This definition includes all charges[51] and fees[52] prescribed in the various *State Land Rules* and the *N.L.C. (Survey Fees) Order, 1965* as well as other sums due under any previous land legislation.[53]

The *Manual for Land Administration*[54] published in 1980 by the Federal Department of Lands and Mines, identifies nine items of land revenue which fall within the responsibility of every Land Office to collect. These are:

(a) annual rent;

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51 As stated above, the definition includes payment of a *Consolidated Annual Charge* or the C.A.C. imposed by the State Authority under Section 20(1) of the *Land (Group Settlement Areas) Act, 1960* in respect of occupation of a rural holding. Payment of the charges over a specified period for this 'occupation in anticipation of title' ceases the moment the whole amount is satisfied and henceforth a title is registered for the land as an alienated land and liable to an annual rent. But for the purposes of this study, the scope is confined only to alienated land, thus excluding land under Group Settlement Areas.

52 Except survey fees, these include arrears fees, notice fees and other office fees. Details of the office fees are listed with breakdowns of their scheduled fees in the respective *State Land Rules*.

53 Compare this definition with the definition of 'land revenue' under Section Two of the *'Land Code' Chapter 138* or *Cap. 138* which reads: Land Revenue' means every sum now due or which shall hereafter become due to the Ruler of the State on account of premium or rent due in respect of land, and fees of any kind chargeable under this Enactment'. It is obvious that under the *Code* the definition occupies a far wider scope encompassing any sums 'due to' and 'to be collected' by' the State Authority despite the fact that they may not necessarily form the actual 'State revenue.' The importance of this definition lies in relation to Section 10(2) of the *Code* by which Federal revenue is, in the first instance, to be collected by the State. An unpublished commentary and explanatory '*Notes Upon The National Land Code by the Commissioner Land Legislation*' emphasised the differentiation. Though the name of the author of the undated material as obtained from the library of the Office of the Director General of Lands and Mines, Kuala Lumpur in May, 1992 was not stated, it was attributed in pencil to a '[Mr]. Blacker' and the note became referred to as '*Blacker's Notes*.' It was probably written by Mr.K.A. Blacker formerly Commissioner of Lands and Mines, Johore who at the end of April, 1959 'was transferred to Kuala Lumpur on promotion to a Federal appointment [as the Federal Commissioner of Lands and Mines]' as mentioned in *ANM/J/PTG1*: 'The State of Johore - Report on Land Administration, 1959' by his successor Mr. M.J.T. McCann, previously the Commissioner of Land and Mines, Trengganu.

54 Pp. 389-420. Also available in Malay, the manual though in need of periodic revisions is a reliable and informative work guide essential to all land officers.

(b) premium;

(c) fee for Temporary Occupation of Land (T.O.L.) and permit;

(d) rent for mining land;[55]

(e) drainage rate;

(f) irrigation rate;

(g) education rate;

(h) survey fees; and

(i) office fees.

Of these, the definition of 'rent' is potentially confusing. Further definition of 'rent' under the *Code* is given as:

(i) 'any annual sum payable to the State Authority by way of rent,'[56] that is, the *annual rent*[57] as stated in the document of land title;

(ii) 'any annual payment due to the State Authority which by any written law is to be collected as if it were rent or land revenue.'[58] Under this *annual payment* are the education rate,[59] the irrigation rate[60] or the drainage

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55 Though listed together, this rent does not come within the general definition of 'rent' in the *Code* and while the responsibility for its collection also rests with the Land Office the procedures for the collection and recovery are governed by Section 17 of the *Mining Enactment (F.M.S. Cap 138)*.

56 Section Five of the *Code*, p.7.

57 The *annual rent* is more commonly referred to in early land legislation, including that of '*The Land Enactment, 1911*' (No. 11 of 1911) as the *quit-rent*. The word 'quit rent' is still interchangeably used among wide circles of land administrators and legislators.

58 *Op. cit.*, the *Code*.

59 This was a *rate* imposed on immovable property under Section Four of the *Education (Amendment) Act, 1963* as amended by the *Education (Amendment) Act 1966*. Under the Act, the Land Office was responsible for its collection within the district boundary outside a local authority. Under Section Four of the Act, for purposes of its collection and recovery the *education rate* was to be treated as annual rent payable in respect of the (alienated) land. The same manner was to be applied for its recovery as for that of the *quit rent*. Though not payable in respect of land disposed of by way of temporary occupation licence the *rate* was, however, payable in respect of mining land. As stipulated in the *Manual*, p.390, the rate was 'payable for any particular year only if before the end of August in the previous year the Yang Dipertuan Agung makes a declaration in the Federal Government Gazette...that Section Four...is to have effect for that particular year' after which declaration the Minister of Education would inform the State Government before October of the previous year of the rates to be imposed and collected for that year and the State Secretary would take action to publish the rates in the State Government Gazette. This education rate was, however, not payable since 1978.

rate;[61] and

(iii) 'any fee due to the State Authority in respect of arrears of rent by virtue of rules under Section 14 [of the *Code*].'

This last definition refers to an *arrears fee* payable in addition to the annual rent immediately upon the annual rent being in arrear, and a *notice fee*, a further addition to the arrears fee made in accordance with the issuance and service of demand for the recovery of the annual rent. Along with the annual rent, premium is another item of land revenue. It is the amount payable either on approval of first alienation of land or on subsequent approval of application by a registered owner to vary the condition or the category of his land. Premium is usually settled for by way of a single lump-sum payment but instalments are also possible with the approval of a competent authority. Though compared to the annual rent the premium is of a larger amount it is not a yearly recurrence. Therefore while expected revenue from the annual rent can fairly be estimated prior to annual budgeting, forecast for revenue from premium will largely depend on the balanced probability of fresh land alienations and applications by registered proprietors for variations of conditions or categories of their land in the ensuing year.

Another item of land revenue is *fees* payable in consideration of licence for temporary occupation of land and permit for the extraction, removal and transportation of various items of *rock materials*.[62] While licence for temporary occupation of land

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60 Payable under Section 6(2) of the *Irrigation Areas Ordinance, 1953*. As soon as an irrigation project was completed and proprietors of land situated within the project enjoyed its benefit, the Collector of Land Revenue was to gazette the irrigation area and the *rate* to be imposed. The method for collection and recovery of the *rate* would be the same as that applied to the land annual rent. There was also provision in the *Ordinance* for a reduction of the amount of *rate* payable if the 'Appropriate Authority' was satisfied that the proprietors did not enjoy the full benefit of the project.

61 Applicable in like manner as in the case of the irrigation rate, the *drainage rate* was imposed under Section Eight of the *Drainage Works Ordinance, 1954*.

62 *Op. cit., the Code*, defines rock materials as 'any rock, stone, marble, gravel, sand, earth, laterite, loam, clay, soil, mud, turf, peat, coral, shell or guano within or upon any land, and includes also any bricks, lime, cement or other commodity manufactured therefrom.' The latest rendition is the inclusion in the State *Land Rule* of 'permit to collect or extract agricultural produce' which is meant to accomodate fruit trees and other tree produce such as rubber and palm oil seeds. See as an example, Section 34 of the *Pahang Land Rules, 1986*. But it is to be noted that (i) the above definition does not include 'minerals' which falls within the definition of the *Mining Enactment*, and that (ii) permit is not needed for the extraction, removal or transportation of rock materials if the activities involved are confined only to areas within the same lot of land. A lot is a surveyed piece

applies only to State land or reserved land,[63] permit for the above purposes is generally applicable to all lands including alienated land. By extension of the concept of occupation of State land or reserved land, the *Pahang Land Rules, 1986*, also provided for 'permit to use air space', *viz.*, to cater for the current usage of 'passage way, cantilever / balcony, overhead bridge, motor way, canopy and porch.'[64]

The Annual Land Rent Provisions.

Apart from stipulating the term of years, the amount of premium and the conditions or the restriction in interest imposed upon it, State land is alienated by the State Authority in consideration of the payment of an annual rent.[65] Pursuant to section 93 of the *Code* rent payable in respect of any alienated land is regarded as a debt due to the State Authority and the State Authority is empowered to effect its recovery by way of employing provisions of sections 16 which allows the State Authority to commence, prosecute and carry on any action, suit or other proceeding relating to 'the recovery of any item of land revenue, or any instalment thereof,' or section 100 which empowers it to forfeit land for non-payment of rent.

As provided for under section 94, depending on whether alienation takes place before or after the month of September of the calendar year, rent payable in respect of the alienated land shall fall due in full[66] from the beginning of the calendar year.[67] For land

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of land assigned a reference number by the Director of Survey.

63 'State land' is defined under the *Code*, *ibid.*, as all land in the State including river bed, foreshore and sea bed within its boundaries and territorial waters other than -

(a) alienated land;
(b) reserved land;
(c) mining land; and
(d) reserved forest.

'Reserved land' means land which is presently reserved for public purpose in accordance either with Section 62 of the *Code* or any previous land law.

64 Sections 35 and 36 of the *Pahang Land Rules, 1986.*

65 The *Code*, *op. cit.*, section 76.

66 In other words it cannot be paid in proportion to the corresponding month or months of the calendar year. With the exception of land alienated after September which does not attract rent for the remaining months of the calendar year, a proprietor of any other land alienated before September is liable to rent payable at the rate calculated for the whole of the calendar year. Under the *Land*

alienated after September, rent payable will only fall due from the first day of the calendar year next. On both circumstances, if not sooner paid after the first of January, rent becomes in arrear on the first of June[68] of the calendar year. These provisions were however without prejudice to the power vested in the State Authority to grant remission[69] or rebate[70] and to authorise payment by instalment[71] or to defer[72] payment of any rent.[73]

Enactment, 1903, no rent is demanded in respect of a calender year if a grant is not issued and land is not occupied prior to 1 October. *ANM/P/PTG3:* 'The Land Laws and Land Administration of the Federated Malay States,' p. 6.

67 Section Five defines a calendar year as 'a year beginning on the first day of January.' Though rent is payable in full for the whole of calendar year, sub-section 94(3) provided that land alienated for a term of years before September in the alienation year need not pay 'the rent for the year of expiry if title expires otherwise than at the end of the year.' (Sihombing, *op. cit.*, 'National Land Code...,' p.671).

68 In the State of Kelantan rent becomes in arrear on first July. See Clause I of the Twelfth Schedule of the *Federal Constitution* and Rule 19 of the 'Kelantan Land Rules, 1966,' in *Land Rules Applicable to the States in Malaysia, op. cit.*

69 Either wholly or in part. An instance of the latter is when a parcel of land is partially acquired under the *Land Acquisition Act, 1960*. In this respect, upon application by the Land Administrator, an equivalent amount of rent due for the area acquired is usually granted by the State Authority a corresponding remission from the total sum of rent due calculated based on the original size of the area. The *Federal Territory [Kuala Lumpur] Land Rules, 1975* is the only one which includes in its Rules a '*special remission*.' Under its Rule 19 special remission is granted to alienated land or the undivided share in any alienated so long as they remained registered in the name of either the Sultan or his consort or the Raja Muda (the Regent) or his consort. This special remission is 'deemed to have been remitted as soon as it falls due every year without any request for such remission.' Though no such provision exists even in the *Selangor Land Rules*, it probably comes about in relation to the creation of the Federal Territory of Kuala Lumpur itself out of several districts of the former State of Selangor in 1974.

70 One of the most common grounds for consideration of rebate as mentioned in the various *State Land Rules* is that granted to smallholder-proprietors of land as incentive for participating in a replanting scheme, subject to prescribed conditions and restrictions. As a case in point, in Johore such considerations are given to a proprietor of country land 'who replants the land in whole or in part with planting materials approved by the State Agricultural Officer or the Rubber Replanting Board' provided (i) he applies to the Land Administrator before first April of the calendar year, (ii) at the time of applying, he owns agricultural land not more than 10 acres in area excluding land used solely for the cultivation of *padi*, *rumbia* or *nipah*. With the rebate, the annual rent due is reduced to RM2.00 per acre (or approximately RM5.00 per hectare). Unlike Johore which does not specify the length of period of rebate, in Kelantan the period is limited to a maximum of six years for rubber and coconut and four years for oil-palm with the rent reduced to RM6.00 per hectare. As for Malacca, the period of rebate is five years for land under the Mukim Register or the Malacca Customary Land Register and six years for those under other registers.In the Malacca case, other than the period being renewable the rebate approved would reduce the annual rent of land under the former register to RM12.00 per hectare and RM15.00 per hectare for those under the latter.

71 Since no particular instance is mentioned in any of the *State Land Rules*, in practice it is left to the discretion of the State Authority based on the merits of each case as is referred to it by the State Director.

Under the *Code* the proprietor[74] is duty bound to pay the rent by himself or on his behalf at either the office of the Land Administrator or at any other suitable place[75] the Land Administrator so decides or at such other place 'within the State'[76] as may be prescribed. The *Code* also prescribes the computation of rent payable in respect of any land in connection of its alienation, sub-division, partition, amalgamation or other transaction.[77]

Since land rent forms one of the main sources of revenue for the state, the State Authority is empowered to revise rent[78] and to collect its arrears.[79] In exercising its powers to determine, with approval of the National Land Council, the time to revise the rent, the State Authority apart from not being empowered to effect the first such revision any earlier than 1970, is also not to effect any subsequent revision 'before the expiry of a period of ten years beginning with the most recent date as from which any rents in the

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72 Rule 33 of the *Penang Land Rules, 1965* enables the State Authority to defer payment of rent 'on any portion which has been acquired in accordance with the Land Acquisition Act.'

73 Rule 25 of the *Pahang State Land Rule, 1986* provides for payment of rent in advance so long as the amount to be collected does not exceed the total amount of rent for ten years and the period shall not extend beyond the date of the next revision of rent in respect of section 101 of the Code. Thus far this is the only State which includes directly into its Rule such provision.

74 Section 95 of the *Code*. Absolute responsibility of the proprietor to ensure payment of the rent as a condition of alienation is amplified by Sihombing, *op. cit.*, p. 670, thus: 'If the land is subject to a lease, the proprietor retains this liability unless the parties otherwise agree; in either case the proprietor should ensure the payment for otherwise he will be liable to the lessee, on forfeiture by the State Authority for breach of the convenant for the quiet possession and on course will lose the land. Where the land is subject to a charge, the proprietor as chargor covenants with the chargee that he will continue to pay the annual rent; breach of this convenant is actionable by the chargee in addition to the penalties [incurred by the section]. In neither case may the lessee or chargee apply for relief to the State Authority for such forfeiture.'

75 As an instance, this provision is to facilitate mobile field collections at places the Land Administrator deems fit in addition to rent payable at the Land Office during scheduled working hours.

76 Other than at the respective district land offices or during filed collections organised by the land offices, in the case of Selangor and Trengganu, payments for rent of land in a certain district can lately be made in any other district so long as it is within the respective state only.

77 Section 96 of the *Code*.

78 Division II Part Six Chapter Three sections 101 and 102.

79 *Ibid.*, Chapter II sections 97-100.

State were revised.'[80] While in so revising it is 'not to take account of increases in land values attributable to improvements,'[81] section 102 conferred on the State Authority the power to effect the new standard rate of rent on lands alienated before the commencement of the *Code* 'notwithstanding that it is held rent-free, or subject to any express provision in the document of title that the rent thereby reserved shall not be capable of revision.'[82]

Land Rent Recovery Procedure.

(a) Under Previous Legislations.

Under the *Perak General Land Regulations, 1885* passed by the State Council on 31 January 1885, quit rent reserved in all leases were payable at the respective land offices on the 1st of January annually, 'in advance [and] without demand.' If the rent is not paid, the Collector was empowered to demand its payment by serving a written notice on the proprietor giving him three months to comply with it. If rent remained unpaid, the Collector may then serve an attachment on the proprietor and 'seize and sell' the property or effects of the occupier which may be found on the land. At the same time, the land in question would revert to the State.[83]

Almost similar but slightly detailed provisions were in force in the Straits Settlements the following year under *Ordinance No. IV of 1886.*[84] As an alternative, written notice of demand can also be published in a prescribed manner. If rent remained unpaid, it was only after fifteen days (or more, if so approved by the Collector) have elapsed since the notice was served or published that it (the rent) be deemed an arrear.

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80 Section 101(5)(a) and (b).

81 *Ibid.*, sub-section 101(4).

82 *Ibid.*, sub-section 102(3).

83 *CO273/586/12*: 'Enclosure No. 2 to Federated Malay States Despatch No. 386 of 15/6/1933.' Implementation of the provisions were subject to the notice and attachment being served on the occupier. Fee for the notice and attachment were also stipulated.

84 Entitled 'An Ordinance for Making Better Provision for the Collection of Land Revenue of the Crown' dated 28 June, 1886.

The Collector may then issue an attachment and seize the proprietor's property, effects or crops on the land, and following another prescrtibed notice may sell the seizures by public auction to recover the arrears. But if he could not recover the arrears in first manner, the Collector may, by way of notice served on the defaulter or published declare his intention to sell the said land three months from the date of notice or sale. If the arrears remained unpaid, the Collector may proceed with the sale by public auction, but if, before the expiry of three months the defaulter tendered the full amount due 'with interest charged at eight per cent per annum and costs,' the Collector should desist from all further proceeding.[85]

More detailed modifications were made to collection of land revenue provisions in later legislations.[86] Apart from providing separate definitions for annual rent and other forms of land revenue,[87] *Cap. 138* stipulated that whilst the annual rent became arrear with effect from 1 April, that of land revenue would become arrear on the expiry of the fifteenth day of the service of notice by the Collector. If the arrear remained unpaid, the Collector was expected 'with diligence' to proceed with service of notice of sale of land on the affected defaulter. On this he was reminded not to serve notice on any proprietor who was not resident in the district where the affected land was situated or where the proprietor was dead or could be found. Notice of sale was to be published in the Gazette

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85 *Straits Settlements Government Gazette, July 2, 1886*: 'Ordinance No. IV of 1886.'

86 For example, under the *Land Enactment of 1911* (Federated Malay States Enactment No. 11 of 1911, dated 24 November, 1911), notices of demand and attachments were issued in the forms of schedule R and S respectively. As regards the subsequent action, qualifications were made that in terms of the property to be seized, they were to be that of the defaulter's within the FMS whereas, in terms of the effects or crops to be sold, they were to be any that was found on the land affected by the action, regardless of the owner, provided that the sale should not take place less than three days after the seizure. In the same manner, if rent could not be recovered, the Colllector may, by way of a notice in the form of schedule U, issue a notice of sale of the land. But, unlike previously, this time, the period prior to sale was extended to four months, and apart from the amount of rent and costs, there was no mention of interest to be charged on the defaulter. It was further stipulated that if there were no bid sufficient to recover the rent and cost, the said land should revert to and vested in the Ruler of the State. In the FMS and Johore, where land revenue is in arrears, the Collector of Land Revenue is empowered to authorise the sale of the land whereas, in Kedah and Perlis, the power lies with the Commissioner of Lands. *ANM/P/PTG3*: 'Summary of Differences Between the Land Legislations of Johore, Kedah, Perlis, Trengganu and Kelantan and That of the Federated Malay States.'

87 Section 203(ii) of *Cap. 138* defines 'annual rent' as all annual payments, and 'any other form of land revenue' as all other payments, which are in any other Enactments expressed to be recoverable in the manner provided for the recovery of rent or land revenue. Examples of items of land revenue are office fees for the service of notices and attachments charged under previous laws.

on a date not less than four weeks prior to the scheduled sale and the Collector was, under *Cap. 138*, expected to extensively publicise the notice.

With the exception of reference to Islamic calendar months as the date of rent due or becoming arrear, and allowing for longer grace period of thirty days instead of fifteen (as under *Cap. 138*) prior to commencement of notice of sale, generally similar provisions were included in land enactments in force in Perlis, Kedah and Trengganu.[88] Of significant absence from the *Cap. 138* and the Perlis, Kedah and Trengganu enactments were provisions for service of notice of demand of annual rent, 'attachments, seizure and sale of property, effects or crops' prior to notice of sale land, and 'interests and costs' charged from proceeds of the sale. In place of the latter, upon any surplus of sale, the Collector was empowered to effect from it payment for any arrears and costs due in respect of any other land within his district belonging to the same proprietor. These provisions were soon followed by and adopted in the Straits Settlements with the coming into force at the end of 1940 of the *Land Revenue Collection Ordinance (No. 47 of 1940).*[89] In a preamble to his report, the Acting Attorney General admitted that the system for the collection of land revenue then in force was 'antiquated and cumbrous and threw upon land officers a great deal of useless work in the service of notices of demand and warrants of attachment.'[90] In proposing the abolition of notice of demand of rent, on the grounds that its payment without demand was generally a condition of the land title, the Acting Attorney General also proposed that the period between the dates of notice and the actual sale of land be

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88 Perlis' 1936 *Enactment No. 8 of 1354 'The Land Revenue (Amendment No. 2) Act, 1354'*; Kedah's 1931 and 1938 *Enactment No. 18 of 1349 'The Land Enactment 1349'* and *Enactment No. 56 (Land)*; and Trengganu's 1939 *Enactment No. 3 of 1357.*

89 In his report to the Governor, the Acting Attorney-General, among other, proposed that,
(a) quit rent, if not paid by 1st April be deemed an 'arrear,'
(b) a notice of demand for rent be replaced by a notice of sale,
(c) attachment of property be abolished, and
(d) the charge of eight per cent interest on arrears be omitted and be replaced instead by a provision which would empower the Collector to deduct payment of 'any arrear due in respect of any other land within the Settlement belonging to the same proprietor.'
CO/273/668/6: Enclosure No. 2 to Straits Despatch 283 of 13 November 1940: Report on an Ordinance to Amend and to Re-enact the Law Relating to Collection of the Land Revenue of the Crown (No. 47 of 1940); *CO273/668/6*: 'Land Revenue Collection Ordinance, 1940 (No. 47 of 1940).'

90 *Ibid., CO/273/668/6*: 'Enclosure No. 3...' The same views was recorded in Kedah when the provisions were adopted. *ANM/SUK213/2486(Siam):* 'Land (Amendment) Enactment, 2602.' (1942).

extended from one month to three months.

Evidences suggest that provisions relating to collection of land revenue and the penalty therewith were strictly enforced and their progress were closely monitored by the Residents and Advisers.[91] In August 1931 Pahang District Officers in their conference decided that those fees for notices of sale for those who paid their arreaers before 1st October be written off but enquiry should be held to determine whether or not sales of land were to be held.[92] In contrast, the Commissioner of Lands and Mines of Trengganu in 1948 even reminded the *penghulus* that revenue from rent were so 'bad - very bad' that their pay increments would depend on the general improvement of the revenue.[93] Even when the Federal Commissioner of Lands and Mines visited the Johore Bahru Land Office in 1964, he was briefed on rent collection progress and was also promised follow-up actions by the said office.[94]

There were obviously numerous instances of sales of land some of which were later annulled on appeals by or on behalf of the owners for various reasons, including failure of paddy harvest caused by flooding,[95] on the grounds of compassion,[96] wrongful

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91 *ANM/CLM 340/52*: 'Minute from British Adviser to Commissionar of Lands, Trengganu.'; *ANM/SUK Kedah 1355: 1224/55*: 'Annual Report of the Land department for the Year 1354' (1936); *ANM/SUK Kedah 2487: 1124/2487*: 'Annual Report of the Land Department for the Year 2486 (Siam)' (1944); *ANM/CLM 270/46*: 'Trengganu Commissioner Circular No. 11/46 of 16.7.1346' (1928); *ANM/CLM 123/50*: 'Trengganu Commissioner Circular No. 4/1350' (1932); *ANM/J/PTBB2(CLR 134/33) 1933*: 'Land Held Under Grants Which were Put up for Auction'; *ANM/J/PTJB2(CLR 202/34) 1934*: 'Result of Sale of Lands for Arrears of Rent'.

92 *ANM/Phg. G. 726/31*: 'Minutes of District Officers' Conference held in the Residency Kuala Lipis on 10th August, 1931.'

93 *ANM/CLM 77/48*: 'Memorandum of Comissioner of Lands and Mines, Trengganu to Collectors of Land Revenue, 30 December, 1948'.

94 The Acting Federal Commissioner, Haji Abdul Rahman Mohd Salleh was informed that out of a total of 1,331 notices of demand of rent issued by the Johore Bahru Land Office for the years 1963 and 1964, only five resulted in sales by auction. Three weeks after the visit, Mohd Ghazalli Dato Mahmud, the Johore State Assistant Commissioner of Lands and Mines, instructed the Johore Bahru Collector of Land Revenue to take the necessary actions and promised to follow up on the instruction 'within a month or so'. *ANM/J/PTJB1(CLRJB 1/6/64) 1964*: 'Laporan Lawatan Pesuruhjaya Tanah Persekutuan Tanah Melayu ke Pejabat Tanah Johor Bahru.'

95 *ANM/DO Pekan 126/1932*: '*Penghulu* of Pulau Manis to District Officer, Pekan, 9 March, 1932.'

96 *ANM/DO Bachok 126/55*: 'Lot No. 753, Mukim Melawi Daerah Repek.'

land office procedure or records,[97] negative effects of rubber restriction scheme,[98] and public ignorance of legal procedure.[99] Particularly interesting, however, was the decision arrived at at the Kelantan District Officers' Conference on 5 February, 1949 which agreed that for annulment of forfeiture, the former proprietor be imposed a penalty of twenty times the original amount of annual rent. This was double the penalty adopted by the state the previous year. In fact, in his circular of February 1949, A.N. Ross, the Adviser, Lands and Mines Kelantan, insisted that 'the normal penalty...be 20 times the annual rent...', for he saw 'no reason why defaulters should get back their lands for a fraction of the total value after all the unnecessary labour which they have caused the Land Office staffs.'[100] Five years later, the Adviser, Lands and Mines, reprimanded the District Officer of Bachok for proposing an annulment penalty of 'five or ten times,' and despite annulling a reversion on the basis of 'excessive hardship' [and] 'loss of sources of living,' the former penalised Salleh bin Awang twenty times![101]

(b) Under Current Legislation.

In comparison to the above, to effect payment of land rent which falls into arrears on first of June of the calendar year, the Land Administrator is presently required to serve on the proprietor of the land a notice of demand in Form 6A,[102] in conformity with section 97(1) of the *Code*. Upon the notice having been served, the Land Administrator shall cause a notice of the service to be endorsed on the register document of title to the land

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97 *ANM/DO Bachok 100/54*: 'Minta Balek Tanah Yang Telah Terlelong Kerana Tidak Bayar Hasil Bagi Tahun 1953.'

98 *Op. cit., ANM/CLM 77/48*: 'Memorandum ...'

99 *ANM/Pahang 1110/1949*: 'Annulment of Sale of Land for Arrears of Quit Rent - Kuantan District'; *ANM/LO Temerloh 355/65*: 'Pembatalan Lelong di atas Tanah EMR 1587 Lot 1854, Mukim Chenor'.

100 *ANM/ALM 19/49*: 'Penalty to be Imposed When Sales or Reversions of Lands in 1949 for Non-payment of Rent are Annulled by the Adviser, Lands and Mines, 26 February, 1949.' Note: The underlined words are in the original.

101 *ANM/DO Bachok 99/54/2*:'Order of Annulment of Reversion, 6 December, 1954.' See Appendix 3.1. for details of the Order.

102 Entitled 'Notice of Demand: Arrears of Rent.' See Appendix 3.2.

to which the notice relates.[103]

To enable payment of the sum due to the State Authority by the proprietor of the land or other 'interested parties,'[104] section 98 requires a copy of such notice to also be served on those 'interested parties' allowing them a grace period of three months from the date of its service to settle the amount. If the whole of the sum demanded is paid within the time specified in the notice, the Land Administrator shall cancel or cause to be cancelled the endorsement which had earlier been entered on the register document of title.[105] If however, the whole sum is not tendered to the Land Administrator by the proprietor or on his behalf by any other party, the Land Administrator, pursuant to section 100 'shall by order declare the land forfeit to the State Authority' in accordance with further provisions under sections 130 - 134.

As soon as may be after the making of the order under section 100, the Land Administrator pursuant to section 130(1) shall publish in the Gazette a notification of forfeiture in Form 8A[106] and as soon as possible after such publication, the Land Administrator shall register a memorial to that effect on the register document of title to the affected land. Notwithstanding that the land in question has been gazetted as forfeited,

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103 Section 97(2).

104 Section 98(1) defines these 'interested parties' to whom the notice is to be served after it has been served on the proprietor, as:

'(a) any person or body having a registered interest affecting the land (including a charge of any lease or sub-lease thereof);

(b) any body or person having a lien over the land, or over any lease or sub-lease thereof;

(c) any person or body in occupation of any part thereof under any tenancy exempt from registration which has become protected by an endorsement on the register document of the title to the land under section 317; and

(d) any person or body having a claim protected by caveat affecting the land or any interest therein.'

105 Section 99 of the *Code*.

106 Entitled 'Notice of Reversion to the State.' See Appendix 3.3. It follows that as soon as this notice is published in the Gazette, under section 131,

(a) the land shall revert to and vest in, the State Authority as State land, freed and discharged from all encumbrances,

(b) any buildings existing on the land shall also vest in the State Authority without payment of compensation, and

(c) any item of land revenue then due to the State Authority thereof shall be extinguished.

another three months shall lapse before the said land becomes absolutely reverted to the State Authority and becomes in effect State land. This three month period is basically to enable the State Authority to annul the forfeiture or to re-alienate it to the previous proprietor on appeals by the proprietor[107] or by order of the Court.[108] Subject to the final outcome of any appeal to the State Authority or to any order by the Court, the forfeited land shall not be disposed of by the State Authority and the issue document of title to the land shall not be destroyed.[109]

Land Rent Recovery: Selected Appeal Cases.

(a) Case Before the Court of Judicature, Penang Island, 1818:

East India Company v. David Brown, 1818:[110]

This probably represented the earliest attempt by the Government at Bengal to resume land on Penang Island on the grounds of the landowner, one David Brown, having defaulted payment of the annual quit rent. An attempt by the Government in 1818 to effect payment of all arrears of quit rent by Brown had earlier been preceded by two public notices in December 1813 and August 1814[111] registering the Government's intention to enforce recovery of the quit rent by way of forfeiture of lands.

In the first notice, the Government, reminding proprietors of the terms of their land grants, warned those who 'refused or neglected to pay' the quit rent due that should they fail to 'discharge [the amount] on or before the 30th of April next ensuing...at the Collector's Office...' their properties would be considered as having reverted to the 'possession of the Company' and the grants cancelled. This was followed by the second

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107 Section 133.

108 Section 134 in conjunction with section 418 'Appeals to the Court.'

109 Section 132.

110 *ANMMISC.19:* 'Minute on Landed Tenure of thePrince of Wales Island: 15 August, 1823, by W.E. Phillips,' para 93.

111 Dated December 16, 1813 and August 2, 1814 and signed by W.A. Clubley, Secretary to the Government at Fort Cornwallis, Bengal.

notice which granted an extension of the payment period '...in lieu of the 30th April last...to the 1st January ensuing...' admitting that the earlier period given was 'too limited, by reason of the absence from the Island' of many of the proprietors.[112]

Despite the two proclamations no steps were taken until 1818 when Governor Colonel Bannerman's proposal for the authorization to the Superintendents of the Company's Law Suits to apply to the Court of Judicature to enforce the payment of all arrears was followed starting with the institution of an amicable suit against Brown, reputedly the greatest landholder on the Island then. Colonel Bannerman based his proposal on:

(i) the strong opinion of Mr. Duff, the Company's Law Officer that the 'Government is authorized by Law to distrain the Property, *even if the Landholder be absent*, on failure of the arrears of Quit Rent being discharged,' and

(ii) the principle that having purchased the land with all its encumbrances, the present proprietors were responsible to the Government for whatever outstanding arrears of quit rent.

In the decision that ensued the Company lost the suit against Brown. The Court of Judicature decided in favour of the latter on a presumption of law. The Company was reported to have argued for ten years of arrears of quit rent proving the defendant to be in effective possession of the land. Since Brown had been able to produce the Receipts of Government for the last two years, the law presumed that the rent for the previous years had been satisfied, the presumption of which the Company had failed to rebut.

The Company's case was weakened by the facts that:

(1) there had neither been a clause requiring landholders to pay their quit rents at any stated periods nor the imposition of a penalty;

(2) neither of the first two Penang Superintendents appeared to have levied any quit rent;

(3) the first notice on the records of the collection of quit rents only came

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112 *Ibid.*

about in 1795-6, almost ten years after grants had begun to be issued; and

(4) the defective state of early records in the Collector's Office and the want of correct survey of lands had rendered great difficulties to attempts at annual quit rent collection.[113]

As a direct consequence of the above decision, Bannerman entered into a compromise with Brown by which the latter was absolved of all quit rents due by the previous holders of the land provided he discharged whatever quit rent had accrued during his tenancy of the said land. This was followed by the establishment of a form containing a clear saving clause[114] regarding the payment of quit rents for all future grants. One of the first of such new grants, also issued to Brown, concerned a piece of ground situated in the District of Soonghy Cluan. Having granted on him the location, the boundaries and the full powers to 'sell, assign, and dispose of' the said property, strict qualifications were made that the said rights were subject to the payment of a specific amount of annual quit rent at a stipulated place or to an authorised public officer, and the consequentiality of a penalty for the default.[115]

(b) Case under the Land Enactment, 1911.

Collector of Land Revenue, Tapah v Chong Loke Chong and Govind Pershad, 1922.[116]

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113 *Ibid.*, para 96. The Court was convinced that the confusion which prevailed would never have arisen had the Government:

(i) annually collected their quit rents right from the very first year the grants were issued,

(ii) regularly collected the duty as soon as the tax were imposed upon alienations, and

(iii) insisted on the registration of Deeds and Wills.

114 Known as [Governor] Bannerman's Clause.

115 *Ibid.* The clause reads, '...subject, however from the date hereof to an Annual Quit rent of two *Chopongs* for every *Orlong*, to be annually paid by him or them at the Office of the Collector of Customs and Land Revenues for the time being, or such other Public Officer as the Government for the time being may direct to receive the same on failure of which Annual payment being duly made, this Grant to be null and void, and the Ground to revert to the Honorable Company.' Nonetheless, what seems glaringly absent from the clause is 'the determination of a certain dateline or period by which the payment of quit rent is due' which was the crux of the public notices of 1813 and 1814.

116 *3 FMSLR 60.* This was a Perak Civil Appeal case No. 5 of 1922 brought before the Supreme Court and heard by Lionel Woodward, C.J.C., Farrer-Manby, J.C., and Branch, J.C. on 4th November,

This was a case which arose from the sale by the Collector of Land Revenue, Tapah, of a piece of land purportedly belonging to one Chong Loke Chong who was the resident-owner of Lot No. 19 Bidor Town held under grant No. 2134 for which the rent was in arrear for 1920. In accordance with procedures under part VI of the *Land Enactment, 1911*, notices for arrears of rent meant for Chong was, owing to an error in the Land Office records, mistakenly issued by the said office against and posted upon Grant No. 2134 Lot No. 119 in Bidor Town which was a vacant State land. Chong himself was not personally served with such notice. The process was followed by the publication in the gazette on 5th November 1920 of the notice of sale and lot No. 19 was duly sold by public auction under section 73 of the *Enactment*. Following its purchase by a Govind Pershad, the Collector sent to the Registrar of Titles, Ipoh, the order of transfer resulting in Grant No. 2134 Lot No. 19 being registered in the name of the Pershad on 2nd May, 1921.

When the mistake was subsequently discovered the Collector applied to the Judicial Commissioner at Ipoh 'for an order on the Registrar of Titles to rectify the Register of Grant No. 2134 on re-entering the name of Chong Loke Chong as the owner therefore and cancelling the name of Govind Pershad.'[117] At the hearing on 2nd May, 1922, Watson, J.C., dismissed the application with costs on the ground that there had been a sale. On appeal by the Collector, the Supreme Court on 4th November, 1922 reversed the judgment. Woodward, C.J.C., held that 'on the evidence before the Court there was no sale and that Chong Loke Chong's name ought to be restored to the register.'[118] On the question of whether or not there had been a valid sale, he underlined the necessity of full compliance with procedures under the *Enactment* and found that 'owing to the mistaken lot number in the Rent Roll, no steps were taken to attach the personal property of the defaulter, or no notices of sale were served on him or fixed to the

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1922.

117 *Ibid.*, p. 61.

118 *Ibid*.

land covered by the Grant.'[119] Since no notice of sale was ever brought to the knowledge of the defaulter, for it was wrongly served on lot No. 119 instead of lot No. 19, Woodward ruled that there had effectively been no authority on the part of the Collector to sell the latter land, and therefore, there would have been no title conferred on Pershad notwithstanding the execution and registration of its transfer.

Despite stressing the point that the purported sale must necessarily be void unless every step prescribed in the *Enactment* were duly complied with, he viewed the mistake committed by the Land Office as 'a mistake for which no one can be blamed [as] the work of the Land Office is full of details and mistakes there are bound to occur, from time to time; resulting in mistakes in the register.'[120] In consequence of 'there being no sale,' Woodward ordered that Chong Loke Chong's name be restored in the register and Govind Pershad be compensated by the State Government of Perak. Farrer-Manby, J.C., and Branch, J.C., both concurred with Woodward's views and judgment with the latter differing with the rest on the question of costs reserving his opinion that the Government as the succesful appellant should not be made to pay the costs of Chong Loke Chong.

c) Case under the Land Code, 1926.

i) *Tham Hing Kwai v The State of Negri Sembilan and Others, 1931.*[121]

Tham Hing Kwai, a registered owner of a nine-acre land in Grant No. 4381 in the district of Port Dickson failed to pay his rent in 1930. To recover the $19.50 arrear, the Collector of Land Revenue, Port Dickson, took proceedings under the *Land Code, 1926* and gazetted the sale Notification 8196 on 7th November 1930 resulting in the sale of the land by public auction to Sabapathypillai and Shanmugam for $1,175 on 17th December,

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119 *Ibid.*, p. 65.

120 *Ibid.*, p. 66. But he further qualified that 'it is not a simple case of mistake in the register [but] a case of there being no sale.'

121 *MLJ 31.* This was a Seremban Civil Suit No. 75 of 1931 heard before Burton, J., and subsequently filed as Kuala Lumpur Civil Appeal No. 9 of 1931 heard before Thorne, Ag. C.J., Gerahty and Muddie, JJ.

1930. The purchasers immediately deposited a quarter of the purchase price in the Land Office. However, despite the land being still charged to one J.R. Evans for $8,000, the Collector sold it 'free from incumbrances.' On the advice of his solicitor who thought it not possible for Evans to obtain annulment of the sale, Evans in turn purchased the land for $6,000 and became its new registered proprietor. Tham Hing Kwai sought to annul the auction sale of the land or alternatively to claim damages against the State.

Tham admitted his failure to pay the rent for 1930 and recognised the right of the Collector to proceed with the sale. But he sought annulment of the sale on the grounds of four irregularities in the procedures, namely:

i) That the notice of sale served on the Plaintiff did not bear the official seal of the Collector;

ii) That the Collector was in breach of section 208 of the *Land Code*, for while the above notice was served on the Plaintiff on 8th October, 1930, the sale was fixed for 3rd December, 1930 which was five days short of the minimum sixty days 'from the service of [the] notice' as stipulated under the section;

iii) That the notice of sale as appeared in Gazette Notification 8196 of 7th November, 1930 which specified the date of of sale as 17th December 1930,[122] was inconsistent with the date of 3rd December 1930 as the date of the sale spelt out on the notice served on the Plaintiff;[123] and

iv) That as Shanmugam, the joint-purchaser at the sale, was merely a nominee of one Vasagam, then the Chief Clerk in the Port Dickson Land Office, there was a breach of section 235 (i) of the *Land Code*.

Burton, J., after some lengthy examination, cast doubt on Sabapathy's evidence and rejected the notion of Vasagam's complicity entirely. Whereas he was satisfied that

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122 In compliance with section 209 of the *Land Code* which required that a period of not less than thirty days must elapse between the date of the issue of the Gazette Notification and the date of the sale.

123 The Plaintiff contended that the Collector had altered the date of the sale from 3rd December 1930 (on the notice served on the Plaintiff) to 17th December 1930 (in the Gazette Notification 8196) 'not with the view of correcting the irregularity in the notice served on the Plaintiff [under section 208] but to comply with the requirement of section 209.' *Ibid.*, p. 32.

there was no statutory requirement that the chargee [i.e., Evans] should also have been issued with the notice, he accepted the existence of three irregularities but emphasised that what was in dispute was 'only [the] legal effect' of the irregularities. As he found 'no substantial damage caused to the Plaintiff by reason of the irregularities' between the notices under sections 208 and 209, the Judge was of the opinion that the sale could not be annulled. He also found that there was no express legal provision which made the seal essential to the validity of the notice of sale apart from there being no allegation of it being irregularly issued or that it had misled anyone. On the irregularity of its service, being effected on the 8th instead of before the 3rd of October, 1930, the Judge noted that the Gazette Notification No. 8196 contained some six or seven hundred defaulters in the same district alone. As such, he believed that there might have been more such notices issued in the first instance though they never reached the stage of the Gazette. To him it was 'not humanly possible for the Collector to carry out such proceedings without an occasional irregularity' but 'to hold that every such trivial error constitutes the whole of the proceedings a nullity and gives rise to an action for trespass is the negation of reason.'[124] He finally dismissed the Plaintiff's action with costs.

The Plaintiff filed his appeal. Thorne, Ag. C.J., who delivered judgment on behalf of the Court of Appeal established that there were evidences of irregularity and of loss in the case. Citing section 208 of the *Land Code*, the Judge disagreed with the views of Justice Burton and held that 'the service of notice in full conformity' with the provisions of the section was a statutory provision. It therefore formed a statutory duty which 'must be complied with implicitly by the Collector whose failure of which would render the entire proceedings void. As regards section 209, the Judge intrepreted that the Collector's statutory right to offer the land for sale could only be held 'provided and provided only' that he offered it for auction in full conformity with both sections 208 and 209 and 'only at the [same] time, on the [same] date, and at the [same] place' as have been notified under the two sections. Otherwise, the Collector would be a trespasser,[125] for if he failed to comply strictly with the requirement prescribed by the *Land Code*, his power or right to sell land under section 211 would never arise, and his act of selling the land of the

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124 *Ibid.*, p. 36.

125 *Ibid.*, pp. 39-40.

registered holder would be an invasion of the right of property of the land holder.

In rejecting the argument that 'by reason of the difficulties which arise in a Government Office, the statutory provision must be interpreted somewhat liberally,' Justice Thorne countered that if provisions of sections 208 and 209 cast a very heavy burden on the Collector, it was a question for the Legislature to consider, not the Court. In so far as the Court was concerned its function was to interpret the provisions of the statute and to ensure the Collector's full compliance with it. He also rejected the notion that the appellant had stood by and acquiesced in the sale in any way and reminded that 'the members of the public are not mentors of the Collectors of Land Revenue who are supposed to know the law and comply with it.'[126]

The Court then ruled that judgment of Justice Burton should be reversed and judgment should be entered for the Plaintiff. But by reason of the provision of section 42 of the *Land Code*, given the fact that Evans had already been registered as the proprietor in the land title, it had been impossible for the Court to make an effective order on the appellant's claim for the annulment of the sale. The Court therefore upheld the judgment of the trial judge upon the question of annulment of the sale but reversed it upon the question of damages and remitted it to the Seremban Court to try the question of the amount of damages, if any, established by the appellant against the State as the first respondent.

ii) H.W. Reid v The Collector of Land Revenue, Batang Padang, 1932.[127]

The case involved one H.W. Reid, a British rubber planter who owned 450 acres of estate in the district of Batang Padang, Tapah in the State of Perak. Titles of the land

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126 *Ibid.*, p.40.

127 *CO 273/586/12* and *CO 273/612/11*: correspondence between H.W. Reid and the Collector of Land Revenue, Batang Pedang, the British Resident, Perak and the High Commissioner, Federated Malay States: 18 August 1932 to 24 August 1933, and correspondence between the High Commissioner, Federated Malay States and the Under Secretary of State, Colonial Office: 20 September 1933 to 14 September 1936.

were acquired from the Perak Government at various dates from 1910. Reid's main contention was the continued validity of the 1903 and 1911 *Land Enactment* and *Title Registration Enactment* to whose provisions and conditions his land was subjected 'for ever'. He disputed the validity of certain provisions of the 1926 *Land Code* whose coming into force in 1928 was purported to repeal the earlier legislations. In rapid exchanges of correspondence within only seven months, Reid had written a total of seventeen letters[128] to the Collector Land Revenue, Batang Padang, to the British Resident, Perak, and to the High Commissioner, the Federated Malay States. In return he received fourteen replies.[129] Reid even exhausted his cause by appealing to His Britannic Majesty, the King-in-Council in London the final outcome of which in September 1936 found in favour of the British Administrators and against him.

On 16 August 1932 the Collector of Land Revenue served on Reid a notice of demand for payment of rent in 'arrears'[130] to which the latter responded by paying the whole amount of $830.50 the next day.[131] On the following day, the Collector sent Reid another letter asking him to pay $2.00 for the 'notice fees.'[132] This was the core issue and

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128 Seven to the Collector of Land Revenue, six to the British Resident, Perak, and four to the High Commissioner of the Federated Malay States.

129 Seven from the Collector (also the District Officer, Mr. A.M. Dryburgh), three from the Resident (signed by Mr.J.V. Cowgill as Acting Secretary to the Resident) and four from the High Commissioner (signed respectively by Mr. G.E. London as Acting Under Secretary to Government of the Federated Malay States, and by W.E. Rigby and H.C.R. Rendle for the Acting Under Secretary).

130 Whereas under the 1911 enactment rent was only defined as in arrears 'after a period of 15 days had elapsed after a written notice of demand had been made', under the 1926 *Land Code* rent became arrears 'if not paid by 1 April' of the current year.

131 Reid had claimed that:

(a) under the previous Collector (one Encik Tahrim) he had been allowed to pay his 1931 rents, calculated at $4.00 and $3.50 per acre, in instalments;

(b) the High Commissioner, on July 30, 1932, had announced that the Government would accept a maximum settlement of $2.00 per acre if rents were paid before the end of the year; and

(c) on 12 August 1932, the District Officer of Batang Padang then, the late Mr. Becket, in his address to the Batang Padang District Planters' Association had further reaffirmed the High Commissioner's statements.

132 Reid argued that

(a) there was no mention in the 1911 legislation of payment of any fee for the serving of a demand notice, and

(b) the 'sum due', i.e. the rent, could be paid within 15 days of the receipt of the demand notice. He therefore contended that only if payment was in default after

the Collector's insistence on him to pay for the 'notice fees' triggered a protracted dispute between Reid and the Government which was further clouded by a number of related issues.[133] Referring to provisions of the 1903 and 1911 legislations, Reid argued at length against his rent being deemed as 'arrears', the method and procedure employed by the Collector to serve on him the demand notice and to charge him for the 'notice fees,'[134] the impropriety of the Collector's action in serving on him a second notice[135] of demand to the extent of the former threatening him to 'enforce the law in all its severity,'[136] and the Collector's general lack of cooperation.[137]

Even though the Collector's actions were consistently upheld by the Resident and the High Commissioner and the Government denied commitment of any irregularity on

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the fifteen days, could the Collector charge on him the 'arrears' fees as costs of the recovery process.

133 The Government's rubber restriction scheme which affected his production, the Government's requirement on him to pay 'assessment' under the *1929 FMS Sanitary Board Enactment*, and the Collector's power as provided for under the *1926 Land Code* which authorized the Collector to cut down trees on alienated ground within a certain distance of Government property without payment of compensation.

134 The Collector claimed that since notices for Reid's land titles had been issued, in accordance 'to instructions from the Resident these [notice] fees become payable from 1st August 1932.' (Letter from Collector of Land Revenue to Reid: 18 August 1932).

135 On 12 October 1932 the Collector forwarded Reid the receipt for his rent payment but reminded that should the latter fail to pay the $2.00 notice fee (which by then had become an item of 'land revenue') within two weeks, 'I shall have no option but to issue a further notice of demand for the recovery of this amount together with the further fees for issue and service of this second notice.' Interestingly, the Collector again reminded Reid that the amount of the second notice would become an arrear on the 15th day after service of the notice and would, in the event of his non-payment, be followed by a notice of sale 'and if necessary, by the actual sale of one of your titles.' The second notice was actually served and he received a notice of sale for which service he was further charge $1.00. To all these, Reid in his letter dated 14 December 1932, rightly asked the High Commissioner that if the first notice of demand had been in order, why had the second notice been required to be served on him by the Collector?

136 Letter from the District Officer to Reid: 12 October 1932.

137 As a British subject Reid had expected a better treatment from a British Officer. He found in Mr. Dryburgh a 'discourteous' District Officer whose 'present practice of seizure,' he contended, was 'reverting to the practice of the Rulers before British Administration, a practice which British Administration was to stop.'. Reid deeply regretted that despite his request for advice and his appeals being considered by the British Resident and the High Commissioner, the District Officer proceeded with the issuance of notices of demand and the gazetting for sale by auction of three of his grants (for 415 acres) for the recovery of $4.00 (Reid's letter to the Chief Secretary, FMS: 16 January 1933).

its part,[138] close examination of the case would conclude that:

(i) Reid had been erroneous in disputing the legality of the *1926 Land Code* over-ruling provisions of the 1903 and 1911 legislations;

(ii) despite his persistence with the 'erroneous' understanding, it would seem that Reid had unnecessarily been humiliated particularly by the Collector / District Officer;[139] and

(iii) whatever 'erroneous' understanding he had had and stood firm for, it had been reinforced by public statements, press releases and clarifications made and past practices adopted by high ranking British officials themselves.

d. Cases Under the National Land Code, 1965:

i) East Union (Malaya) Sdn. Bhd. v Government of the State of Johore and the Government of Malaysia.[140]

This was a case[141] involving a company which owned 7,477 acres of rubber estate known as the Sungei Papan Estate in the state of Johore and had failed to pay its quit rent to the Johore State Government in time. Consequently, the Collector of Land Revenue, the district of Kota Tinggi, issued the Estate five Form 6A notices as required by section 97 of the *National Land Code* ('the *Code*') demanding payment of quit rent due which was in arrears. This was followed by a letter from the Collector received by the manager of the Estate on November 19, 1974 informing him that the notice period had expired and that the former was taking steps to forfeit the Estate to the State Government. The Collector

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138 Letter from Chief Secretary, FMS to Reid: 24 March 1933.

139 It appeared extremely unreasonable and superfluous on the part of the Collector to have gazetted for sale by auction 415 acres of Reid's land (being his efforts of 20 years) in his attempt at recovering 'arrears' of merely $4.00.

140 [1981] 1 *MLJ* 151 (Federal Court) Federal Court No. 1 of 1980. Case heard before Suffian LP, Wan Suleiman FJ, Syed Othman FJ, Abdul Hamid FJ and Hashim Yeop A. Sani FJ on October 24, 25 and December 12, 1980.

141 The subject matter of the case centred on Article 76 of the Federal Constitution which empowered the Federal Parliament, for the purpose only of ensuring uniformity of law and policy, to pass legislation with respect to, *inter alia*, collection of land revenue. Cited in Teo Keang Sood and Khaw Lake Tee, *Land Law in Malaysia: Cases and Commentary*, Singapore: Butterworths, 1987, p. 52.

twice refused to accept payment of the arrears totalling RM115,625.60 from the Estate; once by the latter's representative on December 3, 1974 and another through the post on December 15, 1974. On March 13, 1975, a notice of forfeiture of the Estate land was published in the Johore Government Gazette, and on June 1, a memorial to that effect was registered on the register document of title of the land under section 100 of the *Code*.

In the case brought before the Federal Court, the Estate sought:

(1) for a declaration that section 100 of the *Code* enacted by the Federal Parliament was void on the ground that it was *ultra vires* Article 76(4) of the Federal Constitution in that the section dealt with a subject with respect to which it had no power to legislate; or alternatively

(2) for a declaration that section 100 of the *Code* was void on the ground that it was inconsistent with Article 13 [of the Constitution]; and

(3) for an order that the memorial entered on the Certificate of Grant pursuant to an order made under section 100 be expunged.

As this was an issue over the constitutionality of forfeiture provision as provided for under section 100 of the *Code*, the Lord President of the Federal Court determined that since the validity of the law was challenged on the said first ground as above, under Article 128(1)(a) of the Constitution the Federal Court had exclusive original jurisdiction which she could exercise after leave had been granted by the High Court.[142]

Having traced the history of the *Code* and understanding the rationale behind the provisions of the Merdeka Constitution relating to the Federal-State distribution of competence especially with regard to land, the Court though admitting that the specific subject of 'collection of land revenue' did not appear[143] 'amongst the items set out in Clause (4) of Article 76 with respect to which Parliament may, for the purpose only of

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142 Under section Five of the *Code*, unless otherwise specified, reference to Court means the High Court in Malaya. In this particular case, leave was granted on April 28 1980 by the High Court for the case to be heard before the Federal Court.

143 The Federal Court, though, observed that when the *National Land Code, Act 56 of 1965* was enacted, 'a specific subject of collection of revenue formed an integral aspect of uniformity of law and policy to consolidate the laws governing land, its tenure and dealings, and the registration of title.' Teo, K.S. and Khaw, L.T., *ibid.*, p. 55.

ensuring uniformity of law and policy, make law,'[144] nevertheless concluded that the expression 'land tenure' which was present in the said Clause was wide enough to cover collection of land revenue. Further, while not disputing the applicant's argument that prior to the *Code* there had already been uniform law in the forms of scattered *Enactments* in the Malay States and the Straits Settlements, the Court held the view that Parliament may still legislate law even if there was already uniformity, say, for the purpose of bringing it up-to-date with changed circumstances or to re-enact and consolidate the prevailing law even stronger.

Following its final judgment which ruled that the impugned section 100 of the *Code* was constitutional and was within the power of Parliament to enact, the Federal Court dismissed the suit with costs.[145]

ii) *Pow Hing & Anor v Registrar of Titles, Malacca*.[146]

This was an oft-quoted case which exposed serious flaws on the part of the Collector of Land Revenue and the Registrar of Titles concerned in not adhering to specific mandatory procedures when commencing forfeiture actions.[147]

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144 *Op. cit.*, [1981] 1 *MLJ* 154.

145 Post Federal Court Judgment: On April 10, 1991, counsel for the Estate wrote a letter to the Johore State Secretary referring to the latter's originating Civil Suit No. 38/77 filed at the Johore Bahru High Court for claims amounting to RM486,000, and, to the former's response with a counter claims. The suit which was to have been heard on April 2, 1991 was withdrawn *ex-parte* by the defendant (the Estate) and the Johore State Legal Adviser in turn withdrew the claims. Counsel explained that the *ex-parte* withdrawal was triggered by the Estate's reluctance to initiate action against the State Government. As for the previous case, it was brought before the Federal Court, 'after all attempts at getting the State Authority to annul the forfeiture failed' and, even then, it was brought to the Court for 'determination of a constitutional issue.' Referring to the forfeited land, counsel pleaded from the State Government to kindly consider reinstating to the Estate at least 35% of its forfeited land. However, as of August 1994 it appeared to this researcher that the matter had not been reconsidered by the State Government.

146 [1981] 1 *MLJ* 155 (Federal Court). Federal Court Civil Appeal No. 230 of 1980 heard before Raja Azlan Shah Ag. LP, Abdul Hamid FJ, and Abdoolcader FJ on December 18, 1980.

147 The case demonstrated in clear terms that non-compliance with any mandatory provisions relating to forfeiture would vitiate any purported forfeiture notwithstanding the fact that the forfeiture had already been completed and land had become State land. *Ibid.*, Teo, K.S. and Khaw, L.T., p.56. J. Sihombing, *op.cit.*, p. xxxvii, regarded this case as serving 'salutary lesson to the officers of the Land Office and the Registry Office.'

On August 3, 1979 the Transport Workers' Multi-Purpose Co-Operative Society Limited, as the registered proprietor of a land in the Mukim of Taboh Naning, Malacca, executed a memorandum of transfer of the land in favour of Pow Hing & Anor in specified shares as nominees of the purchaser, Siang Hon Fong. On December 18, 1979 the memorandum of transfer and a discharge[148] together with the issue document of title[149] were transmitted to the Registrar of Titles, Malacca for registration. As the register disclosed that the title was clear, presentation of the instruments was entered as having been made on December 27, 1979.

Upon not receiving any response from the Registrar with regard to the registration of previous instruments, the appellants' solicitors made a title search on January 23, 1980 which found no record of any encumbrances on the register with the exception of the charge in favour of the United Asian Bank.[150] On the same day, the appellants' solicitors also presented instruments of transfer from the second appellant to the first appellant and of a charge executed by the latter on January 18, 1980 in favour of the Hongkong & Shanghai Banking Corporation.[151] But on February 2, 1980, the appellants' solicitors received a letter from the respondent dated February 1, 1980 that the two instruments presented had been rejected by him on January 31, 1980.

On February 6, 1980, the appellants' solicitors received another letter from the respondent dated January 29, 1980 rejecting the transfer and discharge presented earlier for registration on December 27, 1979. On a further search conducted on February 8, 1980, the appellants' solicitors found on the register 'this and for the first time...an undated and unsigned note to the effect that Form 6A...was issued on September 18, 1978 and

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148 The land was previously charged in favour of the United Asian Bank. The discharge had been executed on June 30, 1979.

149 Under the *Code*, when a title of land is registered, the Registrar of Titles shall prepare a set of documents: one is called the Register Document of Title (RDT) to be kept in the land registry while another is called the Issue Document of Title (IDT) which was to be issued to and kept by the registered proprietor of the land.

150 The very purpose of the instruments presented on December 18, 1979 was to have the land (charged to the United Asian Bank) discharged (released) from the said charge.

151 A memorandum of transfer of shares from the second appellant to the first appellant had earlier been executed on January 2, 1980.

registered on September 25, 1978, and they also discovered that the other recorded entries including those relating to the presentation of the transfer and discharge on the register had since been cancelled."[152] With regard to the endorsement, the respondent, on February 13, 1980 admitted to the appellants' solicitor that it had only been made by the former based on information by the Alor Gajah Land Office subsequent to the solicitors' search on January 23, 1980 that a notice in Form 6A under section 97(1) of the *Code* had been issued by the Land Office in respect of the land.

Recapitulating the events leading to the purported forfeiture of the land, the Judge noted from the affidavit evidence that:[153]

(1) A notice of demand in Form 6A under section 97(1) dated January 18, 1978 had on the following day been served on the registered proprietor of the land by or at the instance of the Collector of Land Revenue, Alor Gajah, for arrears of land rent in the aggregate sum of RM1,049.60;

(2) The provisions of section 97(2) requiring the endorsement, by or at the instance of the Collector, on the register document of title to the land in question, of a note of the service of the Form 6A notice had not been complied with;

(3) On failure of the registered proprietor to pay the arrears within the specified period of three months from the date of service of the notice, the Collector had said in his affidavit that accordingly on June 21, 1979 he declared the land forfeit to the State Authority pursuant to the provisions of section 100;

(4) Based on the Collector's affidavit there had been no order as such under section 100 and what he had referred to and exhibited as the order of forfeiture was only Form 8A which was a notification of the forfeiture under section 130(1) for publication in the Gazette which was required to be done as soon as may be after the making of an order under section 100 declaring the land forfeit to the State Authority; and

(5) The fact that the notification in Form 8A had only been published in the

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152 [1981] 1 *MLJ* 156, *op. cit.*

153 *Ibid.*

> Gazette on January 31, 1980 whereas section 130(1) provided that the forfeiture should take effect only upon such publication, would be seen as the publication having only been made after the presentation of the instruments referred to for registration.

Whilst admitting the absence of a clear-cut formula to determine whether a particular statutory provision was mandatory or directory, the Judge having considered several provisions of the case, found it 'abundantly clear [that] the conformance with the provisions of section 97(2) is mandatory and non-compliance therewith would vitiate any subsequent forfeiture effected in the event of failure by the registered proprietor to comply with the notice of demand served on him.'[154] In this respect, the Judge considered the belated endorsement by the Registrar in early 1980 of the 1978 service of the notice of demand as 'a fraud on the law...evidently adhibited to rectify a hopeless situation retrospectively.'[155] With regard to sections 100 and 130(1), the Judge considered the Gazette publication 'contrived as an afterthought...a blatant attempt to forestall [the registration of the appellants' instruments] and justify their rejection and to avoid the consequences of the grave and fatal omission of the Collector...'[156]

In his final judgment, the Judge found the purported forfeiture of the land by the Collector invalid, set it aside and allowed the appeal with costs. Of interest was the Judge's blistering remarks made by way of a postlude that the decision which he delivered 'enjoins every official concerned with or involved in exercising powers and duties under the *Code* and related legislation to regard this judgment as a regrettably necessary but solemn caveat, giving warning, loud and clear, against any wanton disregard or sloppy application of express statutory provisions in the exercise of their functions, and one to be understood, marked and digested as such...they must strive to be *au fait* with the law they have to administer and should not hesitate in the course of their statutory duties to

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154 *Ibid.*, p. 158.

155 *Ibid.*, p. 159.

156 *Ibid.*

seek legal advice whenever necessary from the State Legal Adviser or his confreres...'[157]

(iii) *United Malayan Banking Corporation Bhd. & Anor v Pemungut Hasil Tanah, Kota Tinggi*.[158]

The case before the Privy Council arose out of appeals from the Federal Court of Malaysia regarding the validity of a notice of forfeiture of alienated land issued under the relevant provisions of the *National Land Code 1965*, and, regarding the jurisdiction of the courts to grant relief against such forfeiture.

20,680 acres of land in the district of Kota Tinggi was alienated for a term of 99 years to the second appellant in 1966 by the State Authority of Johor subject to payment of annual rent and other conditions. The second appellant developed the land and granted a number of charges over the land in favour of the first appellant. The rent payable for 1977 amounted to RM124,080 plus education rate of RM31,020 which, due to failure on the part of the second appellant to pay before June 1, 1977 had caused it to fall in arrears on that date. Pursuant to section 97(1) of the *Code*, the Collector of Land Revenue, Kota Tinggi, on June 2, 1977 caused to be served on the second appellant a notice of demand in Form 6A requiring payment of the rent together with penalties within three months. As required by section 98, a copy of the same notice was also served on the first appellant.

Following the failure of either appellant to pay the sum due, on September 7, 1977 the Collector made an order which was published in the Gazette on 15 September, 1977 declaring the land in question forfeit to the State Authority. On December 7, 1977 the appellants instituted proceedings by motion under section 418 of the *Code*. The subject matters of appeal were:

(1) a contention by the appellants that the sum demanded in the notice dated

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157 *Ibid.*, p. 160. Sihombing, *op. cit.*, described the decision as 'the most interesting...[the] publicity [of which] can only assist practitioners and indeed the land office to achieve a more orderly system of land administration in line with the precepts of the Torrens scheme.'

158 [1984] 2 *MLJ* 87 (Privy Council). Privy Council Appeal Nos. 39 and 40 of 1982 heard before Lord Keith of Kinkel, Lord Bridge of Harwich, Lord Brandon of Oakbrook, Lord Templeman and Sir Robin Cooke on June 11, 12 and July 9, 1984.

June 2, 1977 was excessive and that the notice was therefore invalid; and

(2) the question whether those equitable rules of English law which have to do with relief against forfeiture have any application to forfeiture of alienated land duly brought about under the *Code*.[159]

As for the first issue, having examined details of the notice as against provisions of the *Code* and specific sections of the Johore State *Land Rules*, 1966 and its amendments of 1976 and 1979,[160] Their Lordships reiterated the assumption 'that not only an excessive notice fee but also an arrears fee RM6,000 in excess of the correct amount' demanded constituted no more than an irregularity in the form of the notice and was not of a significant nature.[161] Quoting section 134(2) of the *Code*, their Lordships were of the opinion that a demand which was excessive in amount, whether in respect of arrears fee or notice fee or both could neither be an irregularity of service nor an irregularity in form. Since the sum of money demanded in such a notice was a matter of substance, their Lordships concluded that by virtue of sections 99 and 100 of the *Code*, the Collector was prohibited from accepting a tender of any lesser amount, and if the whole amount was not tendered, he had had no option but to declare the land forfeited.[162]

As for the second issue, their Lordships were of the opinion that 'the relevant provisions of the *Code* evince an intention that English rules of equity relating to relief against forfeiture should not be available to proprietors of alienated land.'[163] Recognising the comprehensiveness of the *National Land Code* in respect of the tenure of land in Malaysia, their Lordships concluded that 'there is no room for the importation of any rules

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159 *Op. cit.*, Teo, K.S. and Khaw, T. L., p. 63 and p. 65.

160 The Johore Legal Notifications or JPU 39 of 1966 (Rules 17 and 20), JPU 6 of 1976 (Rule 2) and JPU 63 of 1979 (Rules 1 and 2). Despite determined argument by the appellants' counsel that Rule 1 of the 1979 rules (which provided for the 1979 Amendment Rules to be deemed to have come into force on February 19, 1976) 'did not express with sufficient clarity an intention that the amendment brought about by rule 2 should affect a pending litigation,such as this one, their Lordships regard the conclusion that it did so as being truly inescapable.' *Ibid.*, p. 64.

161 *Ibid.*

162 *Ibid.*, p. 65.

163 *Ibid.*, pp. 65-66.

of English law in that field except in so far as the *Code* itself may expressly provide for this..."[164] and dismissed the appeal.

iv) *Oriental Bank Bhd. & Anor v Pentadbir Tanah, Hulu Kelantan, Gua Musang*.[165]

On June 20, 1982[166] the Collector of Land Revenue, Hulu Kelantan at Gua Musang effected a forfeiture of land[167] belonging to the second appellant, Muhammad bin Salleh, by causing Form 8A to be published in the Gazette on July 8, 1982[168] pursuant to section 130 of the *Code*. The action followed failure on the part of the second appellant to pay the sum due at the expiry of the three-month period granted him after the demand notice in Form 6A had been served on him by or at the instance of the Collector in accordance with section 97(1). But the service of the demand notice was not endorsed on the register document of title as required under section 97(2). It was only endorsed some time after the second appellant executed a memorandum of charge of his land in favour of the first appellant who presented the charge for registration at the land office.

On realising the above irregularity, the first appellant filed an application at the Kota Bharu High Court seeking the Court's orders for:

(1) the endorsement on the register document of title of the purported forfeited land to be expunged;

(2) the appellants to be allowed to pay the rent and its arrears;

(3) the appellants to claim compensation; and

(4) the appellants to claim costs.

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164 *Ibid.*, p. 66.

165 The Hulu Kelantan District Land Office File: *P.T.U.K. bil. 93/7/2*, the Kelantan State Legal Adviser's Office File: *PU (KN) 228-279/(18)* and the State Director of Lands and Mines' File: *PTG. Kn. 18/4/1*. The researcher is indebted to the Kelantan State Director of Lands and Mines for making limited excerpts of correspondences from the respective files available to him in August, 1994.

166 As the files proper were not accessible, not all actual dates could be detailed here.

167 14 acres and 350 *depa* of land identified as G. 14815 Lot 179, Mukim Batu Papan, Hulu Kelantan.

168 The Government of Kelantan Gazette Notification No. 306/82.

The matter was referred to the State Executive Council which in its meeting on November 2, 1988 decided[169] to have it settled out of Court. To effect the settlement, the State Executive Council also decided to:

(1) cancel the Government of Kelantan Gazette Notification No. 306/82;

(2) re-alienate the land to Muhammad bin Salleh [the second appellant] in the state of its being charged to the Oriental Bank Berhad [the first appellant];

(3) [allow] the registered proprietor of the land [the second appellant] or the Bank [as the chargee - the first appellant] to pay the current rent and its arrears; and

(4) leave it to the Honourable State Legal Adviser to negotiate the compensation and costs.[170]

Following the above decisions, the State Director of Lands and Mines on December 3, 1988 caused the annulment of forfeiture[171] of the land to be published. The annulment was gazetted via the Government of Kelantan Gazette Notification No. 7 of 1989 dated January 5, 1989.[172]

v) *Malayan Banking Berhad v Pengarah Tanah dan Galian Negeri Perak and Pemungut Hasil Tanah, Larut & Matang, Taiping*:[173]

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169 In reference to section 133 of the *Code*..

170 The State Legal Adviser by virtue of him being an ex-officio Executive Council member was entitled to be addressed as 'the Honourable'. The first three of the decisions were on November 19, 1988 relayed to the District Land Administrator by the State Legal Adviser for the former's action.

171 The annulment was gazetted pursuant to subsection (1) of section 133 of the *Code* which reads: 'Any person or body who was the proprietor of any alienated land immediately before its forfeiture under this Act may at any time apply to the State Authority for the annulment of the forfeiture.' It is significantly important to ascertain which party actually initiated the annulment process: whether the State Authority (at the instance of either the District Land Administrator himself) or the aggrieved parties (either the registered proprietor or the chargee) appealing to the State. But going by the fact that the appeal was filed in the Court it would probably be the State Legal Adviser who begged leave of the Court to have the matter settled with the Bank.

172 Though no further information was available with regard to the other decisions they were presumably implemented following the annulment.

173 The Larut & Matang District Land Office File: *PTLM 146/4/11* and The Perak State Director of Lands and Mines Office File: *PTG.Pk. 75-10 Pt.4*. The researcher is indebted to the Perak State Director of Lands and Mines and the District Land Administrator, Larut & Matang, Taiping, for allowing access to the respective files in July, 1994.

This case highlighted an incident of certain parcels of land in the district of Taiping which became the subject matter of separate judgments and orders from two competent land authorities, namely the High Court at Ipoh, and the District Land Administrator of Larut & Matang, Taiping. Though the orders were given under different sections of the *Code*,[174] they respectively led to the sale by auction and the purported forfeiture of the said land. The matter was finally resolved by the orders of the High Court, Ipoh.[175]

The lands in question were identified as CT 19513 Lot 2069, CT 19516 Lot 1072 and CT 19526 Lot 2082, all in the Mukim of Tupai, Taiping. The registered proprietor of the land at the material time of the orders was Chan Fook Hoy Sdn Bhd.

On November 11, 1989 the Land Administrator, Taiping signed three demand notices in Form 6A and caused them to be served on the said registered proprietor the following day for the latter's failure to pay quit rent.[176] Persistent failure by the registered proprietor to pay the sum due within the stipulated time in the demand notice was followed by the publication in the Gazette[177] on May 24, 1990 of forfeiture of the land by the Land Administrator.[178] As the parcels of land affected by the Gazette were Registry titles, the Land Administrator on June 6, 1990 sent a copy of the Gazette to the Perak Registrar of Titles. But it was only on August 4, 1990 that endorsements of Forms 6A and 8A were made on the register document of titles by the Registrar.

Incidentally all the land titles above plus another[179] also in the Mukim of Tupai had earlier, since May 1978, been charged by the registered proprietor in favour of the

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174 Actions by the Land Administrators were taken pursuant to sections 97, 100 and 130 pertaining to 'rent' and forfeiture, while those of the High Court were taken under section 256 and 259 relating to 'order for sale of land'.

175 Pursuant to section 418.

176 The amounts demanded were RM323.10, RM323.10 and RM629.70 respectively, including notice fees and penalties accruing from arrears of rent for the period from 1986 to 1989.

177 The Government of Perak Gazette Notification No. 1229/80.

178 Form 8A under section 100 signed on May 24, 1990.

179 Identified as CT 19514 Lot 2070 but not affected by the demand notice.

appellant.[180] On failure of Chan Fook Hoy Sdn. Bhd. to pay the outstanding loan of the charge, counsel for the bank initiated an originating summons[181] which was applied to and obtained from the High Court an order for the sale of all the four parcels of land by auction. The lands were subsequently auctioned on May 21, 1990 and the successful bidder paid the required deposit of ten per cent.

On July 16, 1990 counsel for the bank with the intention of paying the rent of the said lands went to the Larut & Matang Land Office to ascertain the outstanding amount but was told that three of the four parcels of land had been forfeited and reverted to the State. On July 17, 1990 the bank entered a private caveat on the lands in question and this was followed the next day by the counsel writing a letter to the District Land Administrator, Taiping, explaining circumstances of the case and appealing for the annulment of forfeiture of the said lands so as to enable the bank to proceed with their transfers.

From July 16, 1990 onwards there had been many attempts to settle the case out of Court. Having written a letter (July 18, 1990) to the Land Administrator appealing for annulment of the 'forfeiture' counsel for the bank was advised on August 24, 1990 by the former to submit appeal in accordance with section 133 of the *Code* the sub-section of which read, "any person or body who was the proprietor of any alienated land immediately before its forfeiture under this Act may at any time [within three months from the date of the forfeiture gazette being published] apply to the State Authority for the annulment of the forfeiture." The next day, counsel wrote to the Land Administrator and certify that his letter of July 18, 1990 was made under the said section.

On August 24, the Land Administrator forwarded counsel's appeal to the State Director of Lands and Mines for the latter's consideration to which the Registrar of Titles on behalf of the Director in his October 13, 1990 reply to the Land Administrator

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180 Records showed that the three titles served with the demand notices had been charged to the same bank three times and presentations of the memorandum of charge were registered on the register document of titles by the Registrar at 9.52 am on May 5, 1978, at 10.20 a.m. on July 2, 1980 and at 9.07 am on January 4, 1983.

181 Originating Summons No. 31-560-86 filed at the High Court in Ipoh.

admitted that the Gazette of May 24, 1990 was 'not in order for, the demand notice in Form 6A had not been served on the chargee (the bank)' [as required under section 98] and directed the Land Administrator to prepare a paper for consideration of the State Executive Council 'to annul the forfeiture of the said lands under section 133 of the *Code*.' The said paper was prepared by the Land Administrator and submitted to the Registrar on November 21, 1990 recommending annulment of the forfeiture, *inter alia*, due to failure on the former's part to serve the notice 6A on the chargee and the Administration's oversight over the existence of encumbrances [i.e. registered charges in favour of the bank] in the titles.

Though the Land Administrator was not informed of the outcome of the paper, on August 1, 1991, counsel for the bank wrote another letter to the former recording his disappointment over the 'State Executive Council's rejection of the appeal without any apparent reason.' In response, the Land Administrator on August 20, 1991 wrote another letter to the State Director requesting that the appeal again be brought for re-consideration by the State Authority. Despite providing evidence of discrepancies and irregularities committed by land administration officials at both the State and the District levels throughout the forfeiture exercise and reminiscing on the close similarities of the matter with the 'Pow Hing & Anor v Registrar of Titles, Malacca' case, the Land Administrator was verbally informed that the State Executive Council still refused to annul the forfeiture.[182]

After considerable delay, counsel for the bank in a motion filed at the High Court, Ipoh on July 4, 1992 pursuant to section 418 (1) of the *Code* sought an order from the Court for:

(1) the declaration of 'forfeiture' or the seizure by the State Authority of Perak of the lands CT 19513 lot 2069, CT 19516 lot 2072 and CT 19526 lot 2082 all in the Mukim of Tupai, was wrongful in law, invalid and be

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182 It was learned later that though the State Legal Adviser considered the case as having 'a merit' for annulment, he was of the opinion that under section 133, the appeal for annulment of forfeiture could only be made by 'any person or body who was the proprietor...' In this particular case, the State Legal Adviser held the opinion that the bank, as chargee of the said lands, was not 'the proprietor' and therefore had no *locus standi* under section 133.

ordered to be set aside;

(2) all endorsements including any caveat or Registrar Caveat registered on the documents of titles by the State Authority to enforce the 'forfeiture' or seizure be cancelled and expunged from the said document;

(3) the Senior Assistant Registrar of the High Court, Ipoh, to sign the Form or Forms 16F[183] for the lands CT 19513 lot 2069, CT 19514 lot 2070, CT 19516 lot 2072 and CT 19526 lot 2082 all in the Mukim of Tupai to transfer them to Low Chee Han;[184]

(4) the relevant State Authority to register the said Form or Forms 16F presented to it for registration of the said lands in the name of Low Chee Han as the registered proprietor of the lands;

(5) a general indemnity to be assessed;

(6) costs, and

(7) other orders deemed appropriate by the Court.

Finally in an agreed judgment, the High Court on December 8, 1992 granted orders for the first four grounds sought by the applicant's counsel. The Judge also granted two further orders: that the applicant pay all outstanding land rent to date including the arrears and that both parties agreed that there was to be no order as to costs for the application.

vi) *Koperasi Sri Rembau Bhd. & Ors v Pentadbir Tanah, Rembau.*[185]

This case was a repeated exposure of failures on the part of officers at the various levels of land administration in the State to adhere to strict conformity in respect of forfeiture of land. The entire process leading to the final stages of the purported forfeiture was highly flawed.

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183 Certificate of Sale by the Court under section 259.

184 The successful bidder of the auction on May 21, 1990.

185 The District of Rembau Land Office File: *PTR. 254/4/3-B* and The Negeri Sembilan State Director of Lands and Mines Office File: *PTG.NS. 33/34/6 Klt.2*. The researcher is indebted to the Negri Sembilan State Director of Lands and Mines and the Rembau District Land Administrator for allowing access to the respective files in July-August, 1994.

The Koperasi Sri Rembau Bhd. was the registered proprietor of large parcels of land in the district of Rembau. The land were subdivided into hundreds of lots. On September 14, 1989, the District Land Administrator, Rembau served Form 6A notice[186] on the Koperasi demanding payment of the annual rent and arrears before or by December 13, 1989. Similar notice was also served on the Oriental Bank Bhd. in whose favour the lands were charged. Endorsement of the service of the said notice was made on the register document of titles by the Registrar of Titles on January 13, 1990.

After a lapse[187] of nearly four years, the Land Administrator on September 3, 1993 issued[188] an order for forfeiture of the lands in respect of section 100 and this order was published in the Gazette on January 4, 1994[189] in conformity with section 133 of the *Code*. On April 25, 1994, the Land Administrator caused a copy each of the Gazette to be served on the Koperasi, the Oriental Bank Bhd., and the UMBC Finance Bhd[190] advising them that they could either refer to the Court against the forfeiture or appeal to the State Authority for its annulment within three months of the service of the Gazette.

On June 8, 1994, the Koperasi submitted an appeal for annulment to the State Authority through the Land Administrator. Other than regretting that 'the land rent should have been paid by the chargee, the Oriental Bank Bhd,' it also promised to pay the entire

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186 For a total of 449 lots identified as HSDs 1948-2105 lot nos. 1520-1677, HSDs 2108-2132 lot nos. 1680-1704, HSD 2479 lot no.1707, HSDs 2133-2198 lot nos. 1708-1773, HSDs 2201-2236 lot nos. 1774-1809, HSD 2242 lot no. 1815, HSDs 2243-2334 lot nos. 1817-1908 and HSDs 2337-2470 lot nos. 1911-2044, all in the Mukim of Chembong.

187 In actual fact, the then District Land Administrator had way back in 1989 signed his order of forfeiture in Form 8A and forwarded it to the State Director for publication in the Gazette. It was sent through the State Director, as the administrative requirement then was, for the purpose of him in turn sending it through to the State Legal Adviser for 'final clearance.' For no apparent reasons, the then State Director neither sent the 'draft' Form 8A to the State Legal Adviser nor returned it to the District Land Administrator for corrections, if any.

188 It was effectively a re-issuance of the 1989 order for forfeiture 'updated' with only the signature of the current Land Administrator and dated anew.

189 The Government of Negri Sembilan Gazette Notification No. 3/94.

190 They acknowledged receipt of the service on April 26, 1994. While the status of the Oriental Bank Berhad as 'chargee' of the 'forfeited lots' was beyond any doubt, the position of the UMBC Finance Bhd was unclear for in several correspondences with the Land Administrator before and after the service of Forms 6A and 8A. The Koperasi consistently blamed it on the Oriental Bank Bhd for 'failing to pay the rent.'

amount due before December 31, 1994 should the State Authority approve its appeal.[191] Following that the Land Administrator submitted a paper through the State Director for consideration of the State Executive Council. Though in support of the Koperasi's appeal for the annulment, invoking the provision of section 133(2),[192] the Land Administrator recommended that the State Authority impose two conditions on the Koperasi:

(1) that it should pay six times the sum due including penalty and notice fees, the total of which amounted to RM952,040.40;[193] and

(2) that it should pay the total sum due within a final period of one month from the date the Land Administrator issued it a letter to that effect and that the Land Administrator be empowered to immediately reject any other appeal from the Koperasi.

In forwarding the paper to the State Executive Council, the State Director in principle concurred with the Land Administrator's recommendations with the exception that instead of six times, the State Director proposed that the Koperasi be required to pay the rent arrears for 1992-1993, two times the rent due for 1994 and the notice fee, which together, amounted to RM 318,372.80.

By late August 1994, the State Authority had not decided on the appeal. But of interest was the fact that upon being served by the Land Administrator with a copy of the

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191 Copies of the letter were also sent by the chairman of the Koperasi, an elected State Assemblyman, to the Menteri Besar and the State Director of Lands and Mines.

192 Sub-section 133(2) reads: 'The State Authority may in its absolute discretion refuse or allow any petition under this section, and, if it allows the petition, may do so conditionally upon payment by the petitioner -
(a) if the forfeiture was for non-payment of rent, of such penalty, not exceeding six times the sum which he was required to pay by the notice of demand served on him under section 97, as the State Authority may think fit to impose.'

193 Calculated as:

'Total of rent:		
Year 1988-1993:	RM 67,528.40 x 6	= RM 405,170.40
Year 1994:	RM 13,099.00 x 6	= RM 78,594.00
Late Penalty :	RM 77,789.50 x 6	= RM 466,737.00
Notice fee:		= RM 1,539.00
		RM 952,040.00

Source: *Op. cit.*, no. (22) in *PTR.234/4/3-B.*

Gazette of forfeiture, on May 2, 1994 the UMBC Finance Bhd. sent a cheque for RM25,762.30 as 'payment for land rent for the year 1994 for the 902[194] lots charged' in its favour.[195] On June 2, 1994, the Land Administrator acknowledged receipt of the payment but requested the UMBC Finance Bhd. to issue another cheque for RM22,561.90 for 'after all the bills have been calculated and totalled, it was found that the rent for 1994 is RM22,561.90'[196] and not RM25,762.30. The UMBC Finance Bhd. sent the cheque requested on June 9, 1994.

It is beyond doubt that absolute power over land matters is within the jurisdiction of the State. The matter had been deliberated upon and strongly agreed by the Lord Reid Royal Commission in its recommendations for the draft constitution when the independence of the country from Great Britain was being worked out. But under the Federation arrangement, a mechanism for control by the Federal Government over the State Government was instituted through the National Land Council. To achieve the desired centralisation of policy, the *National Land Code* was formulated and introduced for the sake of 'uniformity of law and policy' among the States leaving to the respective State Authorities the power to devise and implement further details by way of the States Land Rules.

Apart from the opportunity to exercise its limited political autonomy of control over land matters, the significant aspect pertaining to and arising out of such control is the State's recourse to land as one of its main sources of revenue and a crucial resource to the State's overall development. Regardless of the amount of revenue generated from such a source, it will reflect the degree of the State's expected dependency on the Federal Government for funds, and with it, the dynamics of the Federal-State relationship.

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194 On its letter-head the UMBC mentioned 901 lots but in the text of the letter mentioned was made of 902 lots as 'charged to UMBC (KLFB).'

195 A question arises whether or not the 901 or 902 lots for which the payment is meant are part of the lots purportedly to have been forfeited? If so, how could the Land Administrator accept' payment for rent' on lands which had already been gazetted a 'State land'? If the payment was not meant for the 'forfeited lots,' why was the UMBC Finance Bhd. served with a notice of the Gazette of forfeiture?

196 It seemed that even the Land Administrator's letter failed to ascertain the actual number of lots charged to the UMBC Finance Bhd., for on the former's letterhead, the figures typed after '9' were very obscure, thus giving many possible renderings such as 910, 900, 901, 902, etc.

Nonetheless, despite wide-ranging powers conferrred upon the State Authority to manage its land resources, the *National Land Code*, supplemented by the respective *State Land Rules* while facilitating the collection and recovery of land revenue expects the implementors at various levels of the State's land administration to be effective and efficient in exercising their duties. As for the Court, to administer justice and to safeguard the public interest at large as land proprietors, it demanded land officers' strict adherence to provisions of the *Code* and conformity with the law.

In the *The East India Company* v. *David Brown* case the Court of Judicature's decision in favour of the former was quite understandable. Given its early formative years and the confusion surrounding Penang's varied land tenure, clear benefit of the doubt was granted to the land proprietor. Nearly two centuries later two landmark cases involving land in the same district of Kota Tinggi were decided against the proprietors and in favour of the Government. Other than putting beyond doubt the constitutionality of the *National Land Code* as a uniform legislation, the judgment in itself proved how powerful the *Code* is as a legislative instrument.

On the contrary, in the *W.H. Reid v the Collector of Land Revenue, Batang Padang* case, a confrontational stance between an officer of the administration and a member of the public could have been avoided if only the Collector had exercised more restraint and tactfulness. As for the case of *Pow Hing & Anor v Registrar of Titles, Malacca*, clear messages delivered by the Judge were meant to strike the conscience of those exercising their powers and carrying out their duties under the *Code*. Unfortunately, as evident in subsequent cases, despite the grim reminders the same gross errors were repeatedly committed time and again by successive layers of land administrators.

CHAPTER FOUR

LAND RENT RECOVERY: A SURVEY OF SOME CONTEMPORARY ISSUES.

The Deputy Prime Minister (DPM) as chairman of the National Land Council chairs the meeting of the Council at least once a year. Apart from the Chief Minister or his representative, who is usually the State Executive Council member in charge of land affairs, the States' Directors of Lands and Mines are also in attendance. But on what appears to have been one rare occasion, in addition to the normal Council meeting, the DPM on February 16, 1993, granted a special session to the States' Directors. During the meeting the Director-General of Lands and Mines on behalf of the State Directors briefed the DPM on the 'Isu-isu Utama Pentadbiran Tanah Negeri' or 'Major Issues of the States' Land Administration.'[1] In the hope of obtaining the much needed sympathy and support of the Deputy Premier for further needed improvement to land administration in the country, the Director-General duly acknowledged the Federal Government's efforts for it in the past. The setting up of the 1957 Land Administration Commission, and land administration seminars held in 1967 and 1973, were particularly cited as occasions which had brought about a number of legal[2] and administrative improvements to the field of work.

That having been said, the Director-General, in his paper, highlighted four issues which land administration as a whole is reputedly still saddled with. These problems which adversely affected land offices' overall performance were identified as:

(a) lack of officers and supporting staffs;

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1 The paper, coordinated by the Ministry, was jointly prepared by the State Directors who had earlier deliberated its contents in their 'States Director of Lands and Mines, Peninsular Malaysia Conference, Paper No. 1/1993, February 2-3, 1993.'(Unpublished).

2 Such as the introduction of uniform laws in the form of the *National Land Code*, the *Land Acquisition Act* and the *Land (Group Settlement) Act*, and, the amendments to land laws to overcome problems related to sub-division of agricultural estates, foreign ownership of land, and the statutory vesting provision much needed to further facilitate privatisation programmes.

(b) lack of skill among officers and staffs;

(c) general weaknesses in the work implementation system; and

(d) lack of office spaces and facilities.

Since land continues to be one of the main sources of revenue for the states, the DPM's attention was focused on the implications of the above problems for land offices' ever increasing arrears of work. The two most significant areas identified in the paper were related to aspects of land disposal[3] and rent collection.

Land Rent Arrears Over Recent Years.

The percentage increase in the annual land rent arrears over the years is a cause for serious concern for land administrators and states treasury officials. In 1982 land titles in the Peninsular totalled 3,708,439[4] but the figure has increased to 4,180,061 eleven years later.[5] From total arrears of RM92 millions at the end of 1982,[6] a decade later the amount had shot up to an alarming rate of about RM200.1 millions[7] involving nearly 580,000 titles, more than doubling the 1982 figure. These initial figures still do not represent the actual total, since the 1992 calendar year had not yet ended and data from at least three states were not fully available.[8] When figures at the close of the 1992 calendar year were disclosed, they revealed actual arrears of RM269.24 millions or a staggering 37 per cent

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3 The problem of land applications awaiting to be processed had been identified in the 1957 Commission report. Apart from that, there were also arrears related to (a) final survey work - as a prerequisite to final titles arising out of land alienation or its development; (b) action against illegal squatters on state land; (c) final solution to the status of Temporary Occupation Licences; (d) approval of land conversions, sub-divisions or partitions; etc.

4 See Appendix 4.1.

5 See Appendix 4.2.

6 See Appendix 4.3.

7 Based on figures made available in *op. cit.*, 'Paper No. 1/1993.'

8 As of November 1992, the amount of arrears totalled RM196,520,514.77 involving 572,172 titles or 13.68% of an estimated total of 4,180,000 titles throughout the Peninsular in 1993. These figures excluded the amount of money and the total number of titles in arrears in the states of Kedah, Kelantan and Malacca, and the total of titles in arrears in Johore. See Appendix 4.4.

increase from that estimated five months earlier. Out of RM621.71 millions to be collected, only RM352.47 millions or 56.68 per cent had been collected, leaving a massive shortfall of 43.31 per cent (see Table 4.1).[9]

Table 4.1. : States Land Rent Collection, Peninsular Malaysia,1992.

State	To Be Collected (RM)	Amount Collected		Amount Uncollected	
		Total (RM)	%	Total (RM)	%
Perlis	8,324,132.65	3,087,707.40	37.1	5,236,425.25	62.9
Terengganu	12,274,929.00	5,850,153.00	47.7	6,424,776.00	52.3
Pahang	50,840,708.00	24,689,534.00	48.6	26,151,174.00	51.4
Perak	101,236,538.16	51,941,858.57	51.3	49,294,679.59	48.7
Selangor	140,723,301.31	73,329,840.38	52.1	67,393,460.93	47.9
FT Kuala Lumpur	80,840,864.35	42,605,845.35	52.7	38,235,019.00	47.3
Malacca	27,059,468.92	14,681,342.74	54.3	12,378,126.18	45.7
Kelantan	14,267,433.89	8,531,753.26	59.8	5,735,680.63	40.2
N. Sembilan	47,123,711.07	30,235,755.83	64.2	16,887,955.24	35.8
Kedah	23,502,791.59	15,194,328.40	64.7	8,308,463.19	35.4
Penang	50,470,000.00	34,540,000.00	68.4	15,930,000.00	31.6
Johore	65,048,608.32	47,781,518.35	73.5	17,267,089.97	26.5
Total	621,712,487.26	352,469,637.28	56.7	269,242,849.98	43.3

Source: 'The States Director of Lands and Mines Peninsular Malaysia Conference, 5-7 July, 1993, Paper No. 9/1/1993.' (Unpublished).

Three years earlier, the State Directors had, in one of their meetings,[10] deliberated

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9 Despite its being presented in July, 1993, there is strong indication that the data obtained from the states by the Ministry did not represent the actual figures for the calendar year ending December 31, 1992. On a positive note, figures obtained directly from the states by the researcher later showed that the actual amounts collected by a number of states by December 31, 1992 were higher than those quoted in 'Paper No. 9/1/1993,' *ibid.* Latest collection figures from Malacca, Pahang, and Kedah gave an amended overall improvement of about 2% with total collections of RM364,487,036.49 or 58.62% and leaving a reduced total of arrears at RM257,225,450.77 or 41.38%.

10 See 'States Director of Lands and Mines, Peninsular Malaysia Conference, Paper No. 1/1/1990, February 27, 1990' entitled 'Laporan Kajian Mengenai Pungutan Cukai Tanah dan Masalah-masalahnya,' or, 'Report of a Study on Land Rent Collection and Its Problems.' (Unpublished).The report was based on a study carried out by a team of officials from the Ministry's Land Management and Legal Divison who toured twelve land offices in six states from July 17 to August 27, 1989.

on a report of a study on land rent collection carried out by a special team of officials from the Ministry of Lands and Regional Development. Using 1986, 1987 and 1988 as the base years, the 58-page report revealed a worrying upward trend of rent arrears. For the years studied, rent arrears steadily increased from RM164.94 millions in 1986 to RM151.8 millions the following year and RM192.98 millions in 1988 (see Table 4.2).

Table 4.2. : Arrears of Land Rent, Peninsular Malaysia, 1986, 1987 and 1988.

State	1986	1987		1988	
	Amount (RM)	Amount (RM)	% Change	Amount (RM)	% Change
Perlis	2,020,000.00	2,400,404.15	+ 18.0	2,844,921.45	+ 18.50
Terengganu	5,367,265.14	4,895,795.50	- 8.61	4,952,066.00	+ 1.11
Pahang	13,399,818.00	17,314,201.00	+ 14.28	20,101,646.00	+ 16.10
Perak	13,478,841.16	16,290,827.68	+ 20.86	21,721,954.81	+ 33.33
Selangor	64,438,117.91	30,699,579.66	- 52.36	44,144,322.31	+ 12.19
FT K. Lumpur	15,000,000.00	33,467,963.00	+ 123.12	36,407,943.30	+ 8.79
Malacca	6,667,827.27	9,516,951.81	+ 42.72	11,762,802.65	+ 23.59
Kelantan	4,202,557.80	4,604,742.28	+ 9.56	4,855,378.34	+ 5.30
N. Sembilan	12,042,714.04	10,482,155.39	- 12.97	11,386,282.87	+ 8.62
Kedah	4,412,532.90	4,364,233.24	- 1.12	4,703,051.23	+ 9.13
Penang	12,232,783.69	14,139,095.50	+ 16.39	18,160,674.11	+ 28.44
Johore	11,676,908.70	2,713,951.50	- 76.68	12,833,501.06	+472.88
Total	164,939,366.61	151,794,027.69	- 6.15	192,980,417.85	+ 27.13

Source: 'The States Director of Lands and Mines Conference, 27 February, 1990, Paper No.1/1/1990.' (Unpublished).[11]

Given the existence of many other forms of work arrears, the fact that rent collection was singled out as one of the only two focused on during the above-mentioned briefing betrayed the plight of the state authorities and the adverse effects of land rent

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11 The 1987 figure which suggested a decrease in the overall total of arrears is disputable. Skewed by the 'sudden dip' in Johore's figures to only RM2.71 millions for that year, it is glaringly inconsistent with the preceding year's figures of RM11.68 millions and that of RM12.83 millions for 1988. Since the inconsistencies went unexplained, it is likely to have been caused by a typographical error committed either by the Johore State Director's office when it submitted the relevant data to the Ministry, or, by the Ministry's Director-General's office when compiling data returns from all the states. Penang's 1986 and Selangor's 1986 and 1987 figures too are suspect.

arrears on the health of state revenues. In a preparatory meeting prior to the briefing the States Director had determined to 'immediately overcome' the worrisome trend of rent arrears by resolving that

> "apart from taking effective forfeiture action under section 100 of the NLC [giving priority first to those landowners having arrears of ten years or more], this Paper[12] intends to apply the experience of the Pahang State Director of Lands and Mines Office as the model..."[13]

The 'Pahang model' refers to that state's success story in increasing its land revenues. By revising and redefining its goals and by setting out clearer target objectives, the state land administration launched its 1990 project 'towards increasing the state of Pahang revenues' and, almost immediately, succeeded in achieving the desired effect. Prior to 1989 the state never earned more than RM50 millions from its land revenues but by 1992 the figure had more than doubled to RM102 millions.[14] The model, presumably the Director-General's selling point in the briefing, supposedly represents the success of an innovative administrative intervention. At the least, it was meant to highlight the steps undertaken by the state to maximise efforts in garnering its limited resources. That aside, the State Directors were genuinely pinning their hopes for the Deputy Premier's sympathy concerning the range of issues besieging land administration as a whole particularly those involving the arrears. Unfortunately the only notable effective outcome of the briefing was the Deputy Premier's directive 'to reduce by half the land rent arrears by the end of 1993,' with a concluding reminder that 'every effort at law enforcement needs to be supported by the State Authority.'[15]

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12 'Paper No. 1/93,' *op. cit.*

13 Parentheses original.

14 See Appendix 4.5.

15 Para 2.4 of 'Paper No. 9/1/1993', *op. cit.* The concluding reminder actually contains an implied emphasis that every enforcement action to be undertaken by a land administrator has first to be referred to and must be sanctioned by the State Authority. Interestingly the Director-General's paper seemed to agree that 'with formal approval of the State Authority, Land Administrators can act to collect land rent with efficiency.' (Para 5.1).

The Director- General's paper on 'Land Rent Collection' noted that

(a) ever increasing arrears caused by landowners' disregard of their own responsibilities could have serious repercussions for the states' development efforts and undermine the authority of the law. This situation called for urgent firm action to overcome the problem and to bring it swiftly under control;

(b) the presence of legal provisions under the *National Land Code*, particularly sections 97(1), 98(1), 99 and 100, in respect of the responsibilities of the different parties to collect and to pay rent, are clear;

(c) for whatever reason or reasons, there seems a "general reluctance" on the part of land administrators to take firm action against landowners who have failed to pay their land rent for years.[16] Failure to enforce the law on the defaulters adversely affects the image of the land office and causes the states to lose for monies required for funding of development remain "frozen" in the hands of the defaulters.

In recognition of the above, the paper proposed:[17]

(a) that landowners be informed of their responsibility to pay rent and to do so on time;

(b) that the State Authority ought to be informed from time to time of the large amount of monies frozen with the landowners which could otherwise be utilised to benefit the public;

(c) that Land Administrators should regard land rent collection as their principal responsibility, which cannot be neglected, and that all available administrative and legal powers should be exercised to implement it;

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16 It appears that in all states there are cases of rent in arrears for a period of about twenty or thirty years or even longer with one extreme case reportedly being more than half-a-century old.

17 *Op. cit.*, 'Paper No. 9/1/1993', paras 4.1-4.7. It also proposes the adoption of a flow chart on the 'rent collection process.' See Appendix 4.6.

(d) that land rent collection performance, though modernised since the 1980s through the computerised revenue collection system in all land offices, needs to be further improved;

(e) that Land Administrators:

(i) urgently update records and addresses of landowners to enable their identification and to facilitate the sending of notices and the collection of rents every year;

(ii) send "selective notices" to land rent defaulters based on the latest arrears;

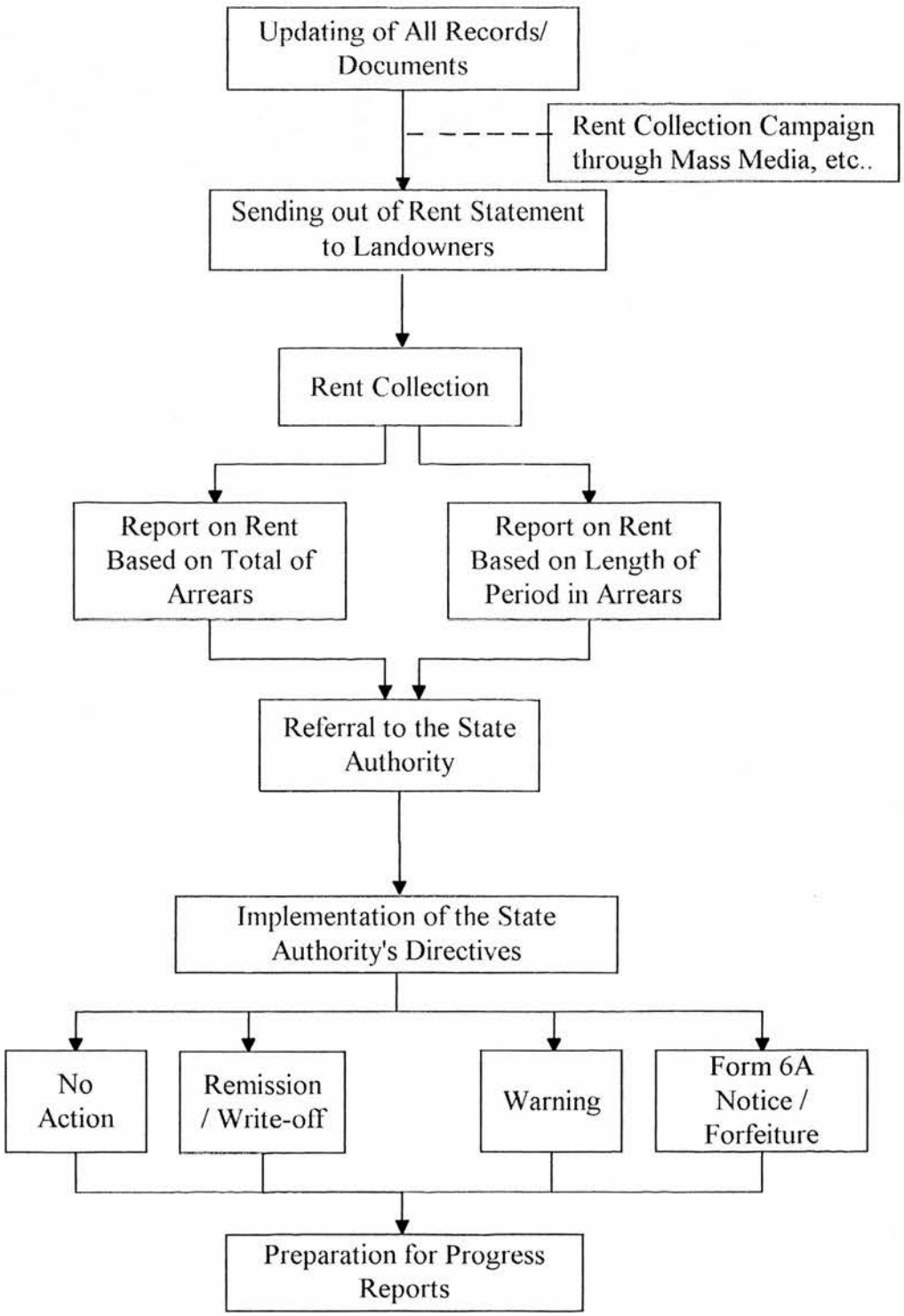
(iii) periodically make proposal to the State Authority regarding the list of alienated lands which ought to be forfeited for the failure of their proprietors to settle arrears (see next page for a proposed flow chart of the process of rent collection recovery); and

(f) that on-going campaigns ought to be conducted through the media in respect of landowners' responsibility to pay rent and to remind them of the repercussions if rents are not paid on time.

Overview of Land Rent Collection and Recovery.

Figures quoted in reports on land rent generally comprise two distinct aspects, namely, the current rent and, the rent in arrears. In addition to the performance of other tasks including the capacity to generate income from other sources of revenue, the achievement of a land office's revenue section is measured by the total amount and percentage of its land rent collection. Whereas Tables 4.1. and 4.2. do provide a general idea of rents collected, they are devoid of the breakdown details between the collection of the respective year's current rent and that of the arrears. The percentages shown are only indicative of the states' average. With the absence of the current and the arrears details they do not reflect the different degrees of achievements or shortfalls between the current collection and the arrears recovery efforts. To a certain extent, therefore, the tables present 'false' impressions of the actual states of rent recovery. Compare the above information with that provided for in Tables 4.3a, 4.3b and 4.3c which follow. The significance of the

Chart 2 : Proposed Rent Collection and Arrears Recovery Process.



Source: Appendix 3 to 'The State Directors of Lands and Mines Conference, 5-7 July 1993, Paper No. 9/1/1993.' (Unpublished).

latter Tables are that they : (i) reflect the general picture of land offices' performance in two different categories of land rents, and (ii) present the actual low degree of the recoverability of rent arrears as compared to the far 'higher' current rent collections. These tables, therefore highlight the real 'pulling down' factors of the agggregate percentages of land rent collection and arrears recovery.

Table 4.3a. : Land Rent Collection of Selected States, Peninsular Malaysia,1992.

State	Total Current Rent (RM)			Total Rent in Arrears (RM)			Overall % (7)
	To Collect (1)	Collected (2)	% (3)	To Collect (4)	Collected (5)	% (6)	
N. Sembilan	28,982,154	23,632,898	81.5	18,141,557	6,602,858	34.5	70.18
Kedah	53,255,765	43,978,634	83.7	7,479,318	1,697,430	22.7	64.38
Kelantan	8,564,312	7,028,306	82.1	5,703,121	1,503,448	26.4	59.80
Penang	58,830,000	37,360,000	63.5	16,640,000	5,620,000	33.8	56.95
FT K. Lumpur	45,405,928	35,775,565	79.0	35,434,936	6,830,281	19.3	52.70
Perak	53,255,765	43,978,634	82.6	47,980,773	8,456,482	17.6	51.79
Perlis	3,612,848	2,615,976	72.4	3,101,258	383,737	12.4	44.68
			77.8			23.8	57.21

Source: Compiled from data gathered from the revenue sections of the respective StateDirector of Lands and Mines offices between June - August, 1994.

Column (7) in Table 4.3a denotes, in percentage term, the sum total of actual collections of current rent (in column 2) and of arrears (in column 5) as compared to the total amount of the same items (in columns 1 and 4 respectively) which were outstanding and ought to have been collected. It shows a 77.8 percent average for the total collection of current rent for the seven states for 1992 with the percentage for arrears being 23.8 while the average for both the current and the arrears being 57.21 percent.

For the following year, figures in Table 4.3b which follows show general overall improvements in various aspects of the collections despite the number of states quoted being one more than in the preceding year. It reflects corresponding increases in current rent collection, arrears recovery, and higher percentages in both, as well as their averages. Unfortunately, as of August 1994 figures from only four states were available. Thus, the

data, presented in Table 4.3c is still inconclusive and does not accurately represent the total collection for the year, since its "account payable period" is still valid up to 31 December.

Table 4.3b. : Land Rent Collection of Selected States, Peninsular Malaysia,1993.

State	Total Current Rent (RM)			Total Rent in Arrears (RM)			Overall %
	To Collect	Collected	%	To Collect	Collected	%	
Johore	53,285,954	50,768,856	95.3	16,424,199	6,424,199	39.5	82.04
Perlis	3,778,505	2,701,584	71.5	3,005,143	414,951	13.8	76.40
N. Sembilan	31,217,921	26,116,179	78.3	16,655,764	6,433,016	38.6	67.99
Kedah	16,779,777	13,563,607	80.8	7,077,959	1,757,547	24.8	64.22
FT K. Lumpur	44,986,814	39,963,676	88.8	37,062,277	10,016,501	27.0	60.91
Kelantan	8,693,058	6,893,058	79.3	5,512,137	1,602,341	28.1	59.80
Penang	53,290,000	35,270,000	66.2	12,400,000	3,400,000	27.4	58.87
Perak	56,354,729	46,222,421	82.0	52,876,193	8,662,234	16.4	50.25
			80.3			25.2	65.06

Source: Compiled from data gathered from the revenue sections of the respective State Director of Lands and Mines offices between June - August, 1994.

Of importance is the fact that Tables 4.3a - 4.3c all provide some clear indications of the contrasting degrees of recoverability between the current rent and that of the arrears.

Table 4.3c. : Land Rent Collection of Selected States, Peninsular Malaysia,1994.

State	Total Current Rent (RM)			Total Rent in Arrears (RM)			Overall %
	To Collect	Collected	%	To Collect	Collected	%	
FT K. Lumpur	67,189,000	60,000,000	89.3	28,000,000	13,500,000	48.2	77.21
Kedah	17,332,934	13,220,651	76.3	7,302,440	1,142,448	15.6	58.30
Perak	56,622,567	44,730,911	79.0	39,713,633	5,465,844	13.8	52.11
Kelantan	8,928,532	6,426,435	72.0	5,952,123	1,086,635	18.3	50.49
			79.2			39.9	59.53

Source: Compiled from data gathered from the revenue sections of the respective State Director of Lands and Mines offices between June - August, 1994.[18]

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18 Figures for FT Kuala Lumpur are estimates obtained from Haji Munawir bin Tambrin, Deputy Director of Lands and Mines, the Federal Territory, Kuala Lumpur. The Kedah figures only cover the period up to May.

It is obvious that apart from recurrent shortfall in current rent collections, land offices as a whole are saddled by outstanding arrears which have accrued over many years.

(a) Ministry of Lands' Observations.

There have been numerous observations made by the Ministry either based on case studies carried out by its specially set up task forces, by its Management Audit Section during its annual auditing exercises, or by individual officials in their preparation of papers for State Directors meetings and conferences or for the National Land Council deliberations. Most of the points raised are included in various parts of this study. Suffice it to mention here the views of Datuk Abdul Manaf Mohd Nor, one of the former Director Generals of the Federal Lands and Mines Department who, in an interview conducted by the National Archives of Malaysia in 1978/79,[19] outlined four main problems encountered by the land office in general. These are:

(i) Compounding arrears of work;

(ii) Worsening quality of work among all levels of officials;

(iii) Deplorable work atmosphere - the lack of space, facilities and support; and

(iv) The urgent need for constant revision and updating of the *National Land Code*.

With the exception of the *Code* which is duly revised with constant updates, the other points raised still need to be fully addressed. The points are not new. They were the 'inherited concerns' of the past, the most recent prior to Datuk Manaf's interview being the observations recorded by the Commission on Land Administration of 1957 and Professor Esman's 1968 study on the critical areas of land administration.[20] Despite the acceptance and implementation of some of their proposals, land administration remains a low-key

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19 *ANM/SL65*: Datuk Abdul Manaf Mohd Noor, former Director General of Federal Lands and Mines, Kuala Lumpur: Interviewed by the National Archives of Malaysia, December 1978 and February, 1979.

20 See *Report of the Land Administration Commission*, Kuala Lumpur: The Government Printers, 1958; *Land Administration: A Study on Some Critical Areas*, The Development Administration Unit, Prime Minister's Department. Kuala Lumpur: 1968.

domain of public administration. Since the Emergency, land administration never recovered its position as the top priority agenda in a district administration. This is evident from the fact that in 1986 in response to the National Land Council chairman's remarks in September 1984, which were tantamount to a call for the urgent 'overhaul' of land administration, a special task force consisting of officials from the Public Services Department and the Ministry of Lands and Mines was set up.

The task force two years later[21] concluded that it was true that a land administration structure which consisted of officers from the State Civil Service and two different federal Civil Services did not allow for continuity of experience[22] but found it 'not quite true' that emplacement of officers not based on specialization leads to lack of interest, inexperience and lack of knowledge on land administration, for it claimed that whilst the GAS officers are not specialised, the ADS officers are.[23] The task force also countered that it was 'not true' to assert that there were no overall training courses planned for Land Administrators, for it claimed that prior to 1981, training was provided by the Ministry of Lands and from 1981 the training was provided by the National Institute of Public Administration (INTAN).[24]

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21 Tabled in the State Directors of Lands and Mines of Peninsular Malaysia 67th Conference, Vol. 2, Paper No. 10/67/1986 : 'Laporan Kajian Mengenai Perjawatan, Penempatan dan Latihan di Peringkat Pentadbiran Tanah.'

22 Apart from the Johore, Kedah, Kelantan and Trengganu State Civil Services officers who manned land administrations in their respective states, the other states were manned by federal officers seconded from the General Administrative Service (GAS) and the Administrative and Diplomatic Service (ADS - formerly the MCS: the Malayan Civil service). In a scheme of service which regarded the GAS as a feeder to the ADS, whilst most GAS officers are posted at the district levels which, however, are virtually all headed by the ADS officers, the ADS officers are mostly concentrated in the central agencies and head the State Secretariats. The task force admitted that in contrast to only two GAS serving as District Officers, 79 are ADS officers. But the bulk of land administration is carried out by the Assistant District Officers (gazetted as Assistant Land Administrators) who are comprised of 74 GAS officers as compared to only eight ADS officers.

23 *Ibid.* But, the argument is flawed, for though in terms of career and service records the ADS officers are considered as 'specialized,' in terms of the actual ground experience of land administration, it is the GAS officers who are the 'specialized' officers.

24 *Ibid.* This is also another debatable conclusion, for after the abolition of the Land Training School (as alluded to and opposed by the Commission on Land Administration, 1957), though numerous trainings were conducted for land officers, they were planned and carried out (until today) by a small training unit in the Ministry of Lands and/or by a sub-unit of INTAN. Researcher's note: The researcher can claim knowledge of this, for the researcher served in the very sub-unit in INTAN which handled 'grassroots training,' and later was personally a participant in a land training course

Probably as an outcome of the study, in 1987 the Public Services Department implemented a massive manpower redeployment involving mainly postings at the district levels. Establishment posts were upgraded and increased, and in a reversal of roles, more senior ADS officers who previously served in central agencies and ministries were redeployed to fill up the majority of all levels of district administration posts replacing the GAS officers. Though a positive start, the impact is yet to be seen especially in the light of unresolved land administration issues still being highlighted at many levels.

(b) Auditor-General's Observations.

Apart from carrying out routine auditing of all departmental operations and preparing their reports,[25] state offices of the Auditor-General's Department also conducted spot checks on selected departments. In the latest series of studies on the 'Computerised Land Revenue Collection System' carried out on a number of selected offices[26] in 1992, the Training Section of the Auditor-General's Department found in all land offices in the states, particularly those observed, general weaknesses in three main areas of security control which it described as:

(i) Input Weakness - failure of senior land officials to observe proper control

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jointly organised by INTAN and the Ministry in 1987. Nevertheless, in all fairness it has also to be mentioned that in April 1992, the Secretary General of Lands and Cooperative Development announced to participants of a District Land Administrators seminar that the Government had approved the setting up of a National Land and Survey Training Institute. This information was confirmed by the federal Director General of Lands and Mines when interviewed by the researcher in August 1994.

25 Some of these are (i) reports of observations conducted on and submitted to the same particular office or agency - for example, a observation report on Land Office 'A' is submitted direct to head of Land Office 'A'; (ii) reports of observations conducted on a particular area of service or a number of similar offices but submitted to the head office either at the State or the Federal levels - for example, a report on 'financial procedures' of many departments in State 'A' may be submitted to the State Finance Office or a report on 'land disposal practices' of many land offices is submitted to the Office of the State Director of Lands and Mines; and (iii) *Annual Reports* of general auditing performances of offices and departments within a State, prepared to be tabled in the respective State Legislative Assembly or alternatively, for federal departments and agencies, to be tabled in Parliament.

26 The Negeri Sembilan, Selangor, Kelantan and Perlis Offices of the State Director of Lands and Mines; District Land Offices of Bachok and Pasir Mas, Kelantan, and Marang, Terengganu.

and maintenance of computer 'passwords' which resulted in the systems being exposed to tamperings;

(ii) Process Weakness - failure of land offices to update and transfer data or their failure to do so properly as set out in the systems manual and procedure; and

(iii) Output Weakness - failure of senior land officials to examine and verify the correctness of accounting figure print-outs.

As regards rent collection, it found in Marang, the existence of 14 cases of arrears of more than RM2,000 each stretching over a period of more than five years and involving a total amount of RM168,218. Apart from that there were 24,617 other such cases including arrears stretching as far back as 1949 (53 years). The total number of records or cases of arrears over a five-year period from 1987 showed an upward trend. In 1987 there were only 413 such cases whereas by 1990 there were 1,325, and a year later the cases rose to 2,255, thus giving an aggregate total of 5,381 cases.

Analysis done in Bachok showed that there were seventeen cases of arrears of more than RM1,000 each and totalled RM125,798. Some of these were cases in arrears since 1977. This was in addition to 395 other cases totalling more than RM50,000. Though they involved arrears of less than RM1,000 each, every one of the cases had been in arrears for more than ten years. Similar findings were also obtained in a number of districts in Negeri Sembilan. In terms of length of period of arrears, there were 1,393 cases totalling nearly RM0.5 millions, of which 93.3% or 1,300 titles totalling RM303,295 were in arrears of between one to 10 years, 50 titles in arrears of between 11 to 20 years, and 43 cases between 21 to 23 years. Based on figures as of September 1993, the studies found that there were 61 titles totalling RM259,847, each with an arrears of more than RM1,000.

In respect of rent recovery, the studies found that there were 48 titles in Perlis for which notices of demand of in Form 6A were noted as having been served on the respective proprietors and endorsed in their grants. Unfortunately closer scrutiny of three of the titles which totalled RM49,620 indicated that records of the action were not updated in the system. In the same circumstances, the studies found that no actions were taken on

983 titles which should have been served the 6A forms.[27]

(c) Researcher's Observations.

Two complementary factors contributed to the recurring arrears phenomenon in the first place. There is the failure on the part of proprietors to meet their obligation to pay the rent on time, or worse still their failure to pay at all. Secondly, the problem is accentuated by land office shortcomings, failures or lack of measures to check effectively the situation from worsening further. Varied explanations are offered by land administration officials to account for arrears. These can be broadly categorised into their perceptions of the factors which led proprietors to default, and their introspection on the shortcomings from within. The proprietors have their own perceptions which may contradict, coincide with or complement those views.

Views from the Top: The Land Officials:

a) *The Land Officials' views of Defaulters*:[28]

Some officials believe that in any given district, a considerable amount of rents in arrears are attributable to "abandoned projects". This refers to proprietors who are entrapped by forced abandonment of their business and commercial ventures on their lands.[29] Most common are housing developers who, having subdivided their lands into numerous lots or having partially or wholly constructed commercial and residential

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27 The studies also noted that in 1992, the Negeri Sembilan Public Account Committee expressed their concurrence with the State Authority's previous decision in 1987 to waive late penalty fees on land proprietors who paid their rents before 31 December, 1987 and to proceed with the issuance of Form 6A against those who continued to default thencewith.

28 Interviews - Dr. Nik Mohd Zain Haji Nik Yusof - 27 August, 1994; Haji Khalid Kadir - 3 and 7 August, 1994; Haji Mohd Radzi - 10 August, 1994; Haji Baderi Haji Dasuki - 12 July, 1994; Haji Mohd Yusof Nayan - 9 August, 1994; Haji Munawir Tambrin - 26, July, 1994; and many others from among the various hierarchical rungs of the land administration who, in this research, are referred to only by their pseudonyms.

29 Interviews - Haji Rashid Amin, 6 July, 1994; Normah Idris, 9-10 August, 1994; Haji Baderi; Hashimah Ahmad; 11 July, 1994 and Razali Alwi, 7 July, 1994.

buildings have suddenly found themselves constrained by debt.[30] Some failed to secure further financing from their banks while others simply failed to sell off their completed houses. According to Normah, in a case related to the latter instance, even intervention by the State Authority to salvage a public housing project by attempting a recourse to the Entrepreneur Revolving Fund[31] resulted in dismal failure.[32] Stuck with huge debt these developers usually do not give priority to settling the rent due to the State Authority. See Table 4.4. for samples of defaulting housing developers and the amount of rent by the

Table 4.4. : Sample of Defaulting Housing Developers in a Selected State.

Registered Proprietor	Amount of Rent in Arrears (RM)
JJDB	277,277.40
CHT	265,631.10
SJSB	176,638.60
ARSB	134,827.35
HHD	95,270.20
AJSB	67,326.50
BJESB	38,348.20
CTT	35,622.50
Total	1,090,941.85

Source: Interview: Normah, 9-10 August, 1994. These are her compilation of major housing developers who defaulted.

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30 Examples are: housing developers 'SJAE' who owed RM86,000 rent in arrears since 1986 on their 389 subdivided lots (interview: Razali) and 'JDSB', 'BJESB' and 'SJSB' which, together were in arrears of more than RM492,000 for 654 subdivided lots since 1981 (interview - J.C. Ooi , 10 August, 1994); and, two quarry lots belonging to 'PQ' and managed by 'SPBP' with a total rent arrears of RM155,000 since 1988 and a further 10 housing developers with a total arrears of over RM1.2 million (Interview: Normah).

31 A scheme launched by the Federal Government but extended to the States with the hope of reviving abandoned housing projects. The main purpose was to salvage house-buyers among the public a large majority of whom had purchased their housing lots (land and house) from the housing developers through private and public financial loans. Despite having made uninterrupted direct debit payments right from the beginning, they were unable to see to the completion of their houses and, in extreme cases, even when the houses were completed they were unable to occupy them for failure on the part of the developers concern to secure the 'Certificate of Fitness to Occupy' from the respective Local Authority.

32 Three companies involved in this case are 'BJ', 'SJ' and 'JD'. SJ alone owned some 400 subdivided lots (Interview: Normah).

default of which payment the State Authority is deprived of its revenue.

Among proprietors too there still persist all sorts of confusions over the question of land rent.[33] Some thought of land rent as a one-off payment. Thus having paid the premium and the first year rent when lands were first alienated to them they were under the impression that no further payment was due. There are also proprietors who having paid their property assessment rates to the Local Authority within which their lands are located misconceived it as meaning that they had settled their annual land rent. Some even mistakenly identified the Local Authority as the Land Office.[34] In addition to individuals who hold the idea that rent is due only on lands which are 'productive' there are developers who assume that they only need to pay rent on 'sold' lots, leaving unpaid the rents on their 'unsold' lots.

Multiple ownership of a single piece of land too is perceived as an important factor in rent default.[35] This factor comes about as a result of land dealings and transmissions of a deceased's estate.[36] But there are also cases of this sort which arise out of illegal

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33 Interviews: Haji Baderi, Haji Rashid and Normah.

34 Surprisingly, this is not the view only of 'rural' residents in districts where the District Officer who, apart from being the Land Administrator, also heads the local authority as the President of the District Council. It is a common view also shared by citizens of Kuala Lumpur and District A, Johore, whose land offices are not in any way related to their respective local authorities. (Interviews: H. Hashim, 26 July, 1994; and C.S. Fuar, 6 July, 1994).

35 Interviews: Datuk Hassan bin Ibrahim, 27 August, 1994; Haji Radzi; Haji Baderi; Mohd Zain Khamis, 8 August, 1994; Husin Arif, 3 August, 1994; and Haji Rashid.

36 Though not necessarily the case, the Islamic law on the distribution of a deceased estate, the *farāiḍ*, is often faulted as the cause of the disintegration of a single piece of family estate into multiple smaller lots, causing it to be uneconomic and finally left abandoned by its beneficiaries. See C.K. Meek, *Land Law and Customs in the Colonies*, London: Oxford University Press, 1946. The *farāiḍ* merely prescribes the rights of each beneficiaries to a certain share of the estate but does not suggest its physical split up. Max Gluckman, *Ideas and Procedures in African Customary Law*, London: Oxford University Press, 1969, recognised the concern of Islam to individual rights and to every co-heir's unilateral right to demand partition of their parts. But, Gluckman, p. 269, admitted the readiness of later researchers to view the breakdown of group tenure as a consequence of settled conditions rather than 'to admit that Islamic law was an influence.' Nevertheless to avoid unlimited transmissions or transfers which might result in uneconomic holding of agricultural land, in 1985 provisions under the *National Land Code* was amended which virtually ensure that transfers, transmissions, alienation and further sub-division or partition of agricultural land will not be approved if the process will result in any one party holding less than an acre.

demarcations of land.[37] There is a growing tendency among co-proprietors resulting from such transactions, some of whom are innocent but ignorant, simply to ignore their rent payment obligation, to refuse to take the initiative to pay, or deliberately to wait for others among them to pay first.[38] Somewhat related to this but with far worse consequences are instances of arrears of rent attributed to or caused by long delays and backlogs of cases pending the outcome of the distribution of a deceased's estate.[39] It seems almost the pattern that for as long as the estate remained undistributed, none among the deceased's beneficiaries would come forward to pay the rent due. Their reluctance is partly due to the absence of any guarantee that when the estate is finally distributed, it is in them, as the individuals purportedly responsible for settling the rent, that the property would be vested.

Another dimension to the problem of estates left unadministered or unattended to is brought about by absentee landlordism. According to Haji Mohd Radzi and Husin, being away or distant from the district wherein their lands lie appeared to the defaulting proprietors to have afforded them a convenient *alibi* or excuse for not paying their land rent. Apathy of this kind, which occurs even among highly educated individuals,[40] perhaps, correctly fitted in with Zaiton's, ʿIsa's and Hashimah's arguments that the issue of rent

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37 In Kedah the problem is known as the '*lot lidi*' or the 'broom lot' whereby a landowner, in total disregard for the land law, arbitrarily marked by the sticking of poles in the ground on a parcel of land, 'multiples of boundaries ' so as to further sub-divide the single lot into numerous 'parcels of lots.' These 'sub-divided' lots are then sold to eager buyers. The arbitrary physical sub-divisions of the single land into many lots but held under a single registered land title, is likened to a broom, which is made up of coconut-leaf sticks, clustered and held together by a single rope or rubber band. (Interview: Zakaria Zaki 8 August, 1994).

38 In her interview, Narimah relates the ironical case of her immediate superior officer in-charge of rent recovery. Probably without any sense of moral guilt, not only did the Assistant Land Administrator, whose wife happens to share a piece of land with her three brothers, refuse to commence recovery proceedings against them, he also did not positively intervene to settle the RM1,000 rent in arrears since 1977. He, instead, apologetically justified his inaction over the case by offering Narimah the excuse that 'my brother-in-law, being the eldest, is supposed to pay the rent.'

39 Depending on the nature and the total value of the estate, distribution is done through either the Public Trustee, the District Land Office or the High Court. Backlog of cases under the *Small Estate Distribution Act, 1955*, is another form of work arrears confronting the Land Administration. Lack of qualified officials to conduct distribution cases is one of the reasons for the time-consuming process. For the whole of Perak state, only two officials are assigned and another two officials are assigned for both Negri Sembilan and Malacca. Interviews: Haji Rashid, Husin, Hashimah and Razali.

40 Interviews: Dr. Nik Mohd Zain; Daud Muluk, 3 August; and Wati Che Mat, 2 August, 1994.

defaults can essentially be narrowed down to the question of the iindividual's attitude. Other than sheer forgetfulness and oversight, in contrast to some proprietors' excuses for default as due to 'lack of money,' there are also others who blame it on the meagre amount of the quit rent.[41] Without dismissing the validity of this, some officials took this to be mere evasive arguments which exhibited some proprietors' deliberate refusal to pay.[42] But, in all fairness, there is still the possibility of there existing among certain cross-sections of the public individuals whose defaults are attributed to pure ignorance of the law.[43] This is seen most among house-buyers who, having purchased their properties through housing developers, banks or other financial institutions, have not the faintest idea about even the look of their land titles.[44] The same is deemed true of buyers of strata title properties who assume that payment of their rents is automatically taken care of by their respective management corporations.[45] Ramly, however, believed that if urban proprietors were to realise the high risk of losing their property by forfeiture under the law, they would not default in the first place. This, he stressed however, is to be differentiated from lay owners of rural agricultural land whose land returns, he argued, are relatively uneconomical. [46]

On a more positive note, there are officials who accept the fact that there are certain segments of the rural public whose failure to pay their rents, or to do so on time, may be attributed to the 'physical inconvenience factor,' in terms of the distance between their places of residence and the the land office. Given difficulty of access to public transport, the time taken and the costs incurred for any such forced trip to the office 'just

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41 Interviews: Mohd Noor, Fuar, and Eddy.

42 Interviews: Haji Mohd Radzi; Haji Munawir, and Yasin Abu, 26 July, 1994.

43 Interviews: Haji Munawir , and Zaiton Jaafar (6 July, 1994) who both emphasised the inclusion of university graduates in their categoriy of 'ignorant' proprietors.

44 As under the terms of the purchase agreement their properties are charged to the banks or financials, titles to the properties are thus directly kept by the institutions in their safe custody until the loan is repaid in full. Haji Munawir and Yasin, *op. cit.*

45 Strata titles are separate individual titles issued to every proprietor of a parcel of a building, say, an apartment or a condominium. Under the *Strata Titles Act, 1987*, these joint-proprietors of the building are to elect in a general meeting a number among them to form a part of a 'management corporation' responsible for the management of the entire property.

46 Interview: Ramly Chik, 7 August, 1994.

to pay the small sum of rent' is deemed uneconomic and highly unjustified[47] in view of the additional hardship it causes to one's presumably already difficult life,[48] which might even result in loss of income for a whole day.[49]

In connection with their own performance, many officials perceived that the administration's failures or shortcomings in delivering certain services could also contribute to or influence land proprietor's tendency to default. Foremost of these is the public expectation that the rent bill will be sent to them by the land office. The irony is that, since it is not mandatory under the law for land offices to send proprietors rent bills, their non-appearance may cause first-time proprietors especially, or those who used to receive them previously, to keep waiting for the bill. When they finally did not receive the bills a considerable number among them resigned themselves to leaving their rents unpaid.[50] Unfortunately there are also among these 'waiting-for-bills' defaulters seasoned proprietors well-versed in the provisions of the law.[51] This contrasted with Daud's, Maimon's and Normah's[52] appreciation of the good intentions of some defaulters who voiced the hope for the land office to allow for more flexible arrangements.[53] A number of these proprietors suggested that the administration look into the possibilty of biannual[54] or advance

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47 Interview: Tini Yahya, 4 August, 1994.

48 Interview: Husin.

49 Interview: Ludin Yahya, 2 August, 1994.

50 Interviews: Haji Mohd Radzi, Haji Munawir, Ludin, Yasin and Zaiton.

51 Haji Baderi (interview),cites one such case which involved a former civil service colleague (now turned businessman), who, despite the latter's own knowledge and experience as a former state Deputy Registrar of Land Titles , keeps blaming the land office for not sending him the rent bills, for imposing on him the fine for late payment and theserving of demand notices for his continuous default.

52 Interview: Normah.

53 Some of these, though probably more limited in their applications, might have already been practised by certain land offices.

54 A normal practice by local authorities which split the payments of assessment rates into two and schedule them, for example, between January to June and July to December.

payment[55] for all categories of proprietors and for the granting of a more prolonged period for deferred payment to large developers, estates and commercial and industrial concerns.

Despite their acknowledgment that some proprietors default with the confident belief, that the land office, realising the impracticality of 'effectiveness of forfeiture' in the past,[56] will not resort to drastic actions. But despite the prevalence of apathy towards the land office as a government department,[57] Haji Munawir does not perceive defaults as deliberate attempts by the defaulters 'to test the system.'[58] Even the failure of some public departments and statutory bodies to pay their land rents is sympathetically attributed to their being innocently unaware of the landed properties which they own,[59] their lack of proper record-keeping details[60] or the failure of the organisations concerned to include the properties in their annual budget and request sufficient allocations to pay the rents.[61]

b) *Land Officials' Views of Internal Shortcomings:*

Apart from failures on the part of proprietors, land rent recovery efforts are seriously hampered by land offices' own unreliable records. For a start many officials interviewed admitted to not having comprehensive and up-to-date record of all land titles within their districts. Thus when land rent collection for the coming year is estimated, one cannot be sure that forecasts are based on actual and reliable data. Quite often estimates are based on subjective discretion. 'Past or conventional practice' is often resorted to as the

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55 Since rent is revised not earlier than ten years after the previous revision, some proprietors whose rent sums are small hope that provisions will be made to facilitate and enable the land office to accept a lump sum payment for rents up to just about a year before the next scheduled revision year.

56 Interviews: Haji Khalid, Hashimah, Ludin,Zakaria, and Mohd Zain.

57 Interview: Hashimah.

58 That is, to test the real strength of land office resolve and the application of the rule of law as regards the defaults.

59 Interview: Dr. Nik Mohd Zain.

60 Interview: Ludin.

61 Interviews: Haji Munawir and Yasin.

convenient explanation for wild estimates.[62] Among some of the crude methods employed by officials to decide their estimates are (i) retaining the same estimated figures as used in the immediate preceding year, (ii) applying a certain percentage increase or decrease over the previous yar's figures based on anticipated developments, such as additional rents on fresh alienations or reductions effected by rent rebates or remissions, and (iii) obtaining a ready estimate prepared by the State's computer centre.[63] Two serious implications arise. It discloses the flaws in land office data updating practices or the lack of them[64] and it leaves one with the lingering suspicion as to whether or not one should trust the reliability of any figures at all which appear in land offices' budget estimates or reports.

In line with technological development, the Ministry of Lands through the Office of the Director-General of Lands and Mines (after this the Director-General's office) in 1985 embarked on an ambitious nation-wide land office computerisation project. As a carefully planned transitional move from the manual system, the first phase of the project was limited to providing land offices with a systems package to enable the updating of data and to facilitate the collection of land rent.[65] But despite its highly obvious advantages, the project has been marred by breakdown' in the system, both in terms of hardware and software. Describing it as weak and quite outdated, one of the respondents, Ludin, largely attributed his office's loss of data, and with it the failure to update the data, to the newly

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62 Interviews: Normah, Muhammad, Wati, Ludin, Zaiton and Razali.

63 The same methods are also mentioned in 'Paper No. 1/1/1990,' pp. 25-31 which also includes four different other methods .

64 *Ibid.*, pp. 17-24, revealed a variety of land rent updating systems adopted by the different states. Of the six states studied, only four (Pahang, Kedah, Kelantan and Negeri Sembilan) complied with the updating method as recommended by the Office of the Director General of Lands and Mines, whereas Selangor and Penang used their own-devised systems. There are also cases of land offices which simply failed to update their data and of others which failed to verify the already updated data.

65 Launched in 1985 but divided into three phases (1985, 1987 and 1988), the project initially aimed to produce fast, exact and updated information on land rent and preparing rent bills. This was soon to be followed by the computerisation of the land registration system. There are currently five types of system developed by the different states in the Peninsular . Apart from the USM (the Science University of Malaysia) system in use in Penang , the Klang Valley Computer Centre system in the Federal Territory of Kuala Lumpur, and the State Computer Centre system in Selangor, the other states adopted the ODGLM system except Malacca which used a combined USM-ODGLM system. Lately, Kedah too has adopted the combined USM-ODGLM system, while Johore and Trengganu are also fast developing their own packages.

acquired system. Double-counting, involving some 1,200 titles in his district, was also blamed on the system.[66] Apart from complaining about the lack of hardware storage, Nor, who shared Ludin's views, also criticised the Director-General's office's training package, which he thought was grossly insufficient. But he reserved most of his criticisms for the higher authorities in his State who, he claimed, failed to appreciate the needs of land administration, an important revenue-generating department. They had refused, he said, to support the Director-General's office's efforts with complementary State investment in specialised personnel and upgrading of the system where it was most lacking.[67] A similar complementary concern was also expressed by Haji Munawir, who admitted that the computer system in his office too was in urgent need of further expansion to cope with the ever increasing workload. At present it lacked skilled personnel. Like practically all land offices in the country, his still maintained the manual system of record keeping and rent collection side by side with the computerised system. Haji Munawir's main criticisms of the present computer system was that 'while it satisfied accounting purposes, there are certain aspects of the legal requirements [under the *National Land Code*] (after this the *Code*) which the software failed to deal with.'[68]

The reliability of computerised data becomes suspect when discrepancies of figures appear. This is clearly shown when base opening figures of rent collection estimates for a certain calendar year are later found to be irreconcilable with the actual total collection for the same year. In 1989 a district in Kelantan collected some RM400,000 in excess of its

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66 Ludin, *op. cit.* As of August 1994, he had managed to trace about 1,200 titles (out of 70,000) whose double-counting had rendered his base opening figure estimates unreliable. This according to him was the failure of the programmed software to extinguish old titles when new titles were already registered in their places. According to him, this problem accounts for an error of some RM400,000 in his 1990 opening figure estimates.

67 As a key figure in the State's land administration, he particularly singled out the State's Finance Office for failing to allocate some RM80,000 to enable the purchase of 'lap-top computers' to facilitate field-collections, and for failing to approve the establishments of the posts of a computer programmer and a systems analyst to help oversee the smooth running of the computerised system. He also blamed the State Secretariat for constantly transferring land officers out of land administration service, thus causing the administration to lose its long-bred experts and skilled personnel. Nor, however, had secured support from outside the normal 'administrative avenue', by obtaining considerable assistance from the State's Economic Development Corporation and one of the State's Public Foundations.

68 Interview: Haji Munawir.

estimate set at the beginning of the year. Another district in the same state in 1991 recorded a 100% arrears recovery achievement whilst figures from a district in Perak disclosed a collection of RM121 millions, a 86.15% or RM56 millions in excess of its base year estimate of RM65 millions. The first case was attributed to 'computer error in double-counting already extinguished titles', the second to 'change-over of officials' and the last to 'an official's forecasting error.'[69] Such discrepancies between the estimated and the actual collected rents and arrears are not totally unexpected. Whereas collections below estimate are explainable as shortfalls in recovery efforts, collections in excess of estimates are difficult to reconcile and explain. There are also many instances of recurring discrepancies year after year (Table 4.5. provides samples of such discrepancies).

Table 4.5. : Samples of Discrepancies Between the Estimated and the Actual Rent Collections of Land Offices in Perak, 1991-1993.

Year	District	Current Rent (RM)		Arrears (RM)		%
		Estimated	Collected	Estimated	Collected	
1991	Perak Tengah, Parit.	1,300,000	1,551,450	-	-	+ 09
1991	Perak Tengah, Kg. Gajah.	321,000	423,175	-	-	+ 32
1991	Perak Tengah, Parit.	-	-	90,000	818,591	+809
1991	Hulu Perak, Lenggong.	290,000	352,310	-	-	+ 21
1991	Hulu Perak, Lenggong.	-	-	65,936	121,941	+ 85
1991	Kerian, Parit Buntar.	-	-	200,000	256,747	+ 28
1992	Perak Tengah, Parit.	1,550,000	2,137,137	-	-	+ 38
1992	Hulu Perak, Lenggong.	290,000	309,785	-	-	+ 06
1993	Perak Tengah, Parit.	1,550,000	2,124,391	-	-	+ 37
1993	Hulu Perak, Lenggong.	290,000	301,615	-	-	+ 04
1993	Kerian, Parit Buntar.	-	-	200,000	383,538	+ 92

Source: Interview : Nor, 12 August, 1994. Note the tendencis of the land offices to 'retain' the opening figures of their yearly estimates based on the immediate preceding year.

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69 The first was detected by the State Audit Department. The case of the 100% rent arrears collection published in the State's Departmental *Annual Report* and hailed as a success story was never amended in the department's next two subsequent *Annual Reports* though when pointed out by the researcher, a State official later admitted it to be a mistake which by August 1994 had already been corrected. He offered the explanation that 'while the previous officer extracted his figures from the rent roll, the new officer extracted it directly from the computer.' There was no credible explanation for the third case. Interviews: Ludin; Muhammad Fitri, 2 August, 1994 and Nor Wahab, 11 August, 1994, respectively.

Table 4.5. shows that in the state of Perak over the three-year period discrepancies prevailed in practically the same three districts of Perak Tengah, Hulu Perak and Kerian. Of some comfort was the fact that, with the exception of Kerian, there were no discrepancies in the other two districts in 1994 although minor discrepancies did occur in the districts of Kerian, Parit Buntar (arrears +0.6%), Manjung (arrears +0.7%) and Larut Matang, Selama (current +3%). No explanation was obtainable for the improvement but the obvious fact is that estimated amount for both the current rent and the arrears for the year had been changed unlike the retained estimates for the previous years, as shown above.

There are also instances of double-counting when expired lease titles are not updated and are instead retained as valid titles or when new titles are issued for vacant lands surrendered to the State Authority.'[70] Exceptionally high percentage of rent arrears recovery evokes suspicion on data reliability. Since it is almost impossible even to achieve a 100% collection of the current rent (the highest to date being the state average of 95.3% achieved by Johore in 1993 - see Table 4.3b), to achieve the same in the collection of arrears would be highly improbable. Though collection of between 30-40% of rent arrears is achievable, a 10-20% collection range is generally the more likely outcome. The more and the longer-standing the arrears are the more difficult they are to recover (See Table 4.6 in the following page). The difficulty of achieving a high percentage of recovery is underlined by the fact that for every percentage of rent collected for the year, be it current or arrears, there is a strong likelihood of some 20% of the current rent itself slipping into arrears, thus compounding further the problem encountered by the land offices in respect of long accrued arrears.[71]

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70 Intereviews: Haji Munawir and Normah. On approval by a State Authority of an application for the sub-division of a parcel of land or for the amalgamation and sub-division of parcels of lands, say, for the development of a housing estate, the applicant is required to set aside areas for road reserves, playing fields, mini-power generation station, etc. These areas which by then have acquired separate lots are usually surrendered to the State Authority to be retained as public reserves following which rents for the 'reserved areas' are remitted and extinguished from the rent roll. It sometime happens, however, that titles are issued for the vacant lots thus resulting in the double-counting of the 'rents.'

71 Interviews: Razali, Hashimah, Nor, Haji Baderi, Haji Radzi and Zaiton.

Table 4.6. : Samples of Land Rent Longest in Arrears.

State	Particulars of Land				Arrears	
	District	Mukim	Title No	Rent (RM)	Amount (RM)	Years
Terengganu	Setiu	Pantai	Kem 104	1.60	3,332.50	51
Perlis	-	Kurong Anai	GM 1465	1.05	139.20	39
N. Sembilan	Seremban	Bandar Seremban	G 01021	98.00	1,580.00	34
Selangor	Sepang	Sepang	EMR 3473	471.00	9,741.00	23
Johore	KotaTinggi	Sedili Besar	AAL 156/63	132.00	2,501.80	23
Penang	Barat Daya	10	Lot 383	12.00	772.15	21
Perak	Ipoh	Ulu Kinta	CT 8893	2,091.00	28,748.00	20
Kelantan	Kota Bharu	Bongor Padang	GM 0084	2.40	209.00	20
Pahang	Kuantan	Ulu Kuantan	HS(M) 88 HS(M)102	44.00	528.00	19
FT K.Lumpur	F. Territory	K. Lumpur	CT 8295	172.80	2,851.20	17

Source: Appendix 2 to 'Paper No. 9/1/1993', *op. cit.*

The situation is aggravated by land office personnel problems. This is mainly in the form of manpower shortage, lack of managerial supervision and, to a certain extent, staff incompetence. Given the diversified nature of work which often 'sandwiched officials between the strict legal constraints of the *Code*, the rapidly-changing needs of the clients and governmental outlook,'[72] land offices are often forced by circumstances to deploy their already overstretched staff to perform tasks which are beyond their list of specific duties. In such circumstances, it is not unusual for financial procedures under Treasury Instructions, office guidelines and other service codes to be disregarded or not adhered to, giving rise to later complications.[73] Haji Baderi claimed that the strength at all levels of land office staff has still not changed and has 'remained the same for the last twenty years, despite a ten-fold increase in the workload.' This in many ways hampers supervision and at times lead to instances of the 'office running out-of-control'; and when attention is forced

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72 Interview: Hashimah.

73 Interviews: Haji Rashid, Muhammad and Yasin.

onto one particular aspect of work, say the collection of land rent, that will mean that it is at the expense of the rest.[74]

As a senior administrative assistant in charge of the revenue section of her office, Zaiton, with long work experience but never before posted to a land office until promoted to her present post two years ago, had hoped that she would benefit from her superior's expertise and initial guidance. But she confessed to being deeply disappointed. She had neither attended nor been proposed to attend a land administration course. Within the last two years her office has been led by four Land Administrators, each for a short-term, the purpose of whose transfers she could never understand. To familiarise and equip herself with knowledge of her new and challenging responsibility, she consulted her subordinates and colleagues in land offices in other districts. But here she was unhappy with their over-dependence on past practices and their resistance to change and innovations. Finding the *Code* too difficult to comprehend, she undertook to perform her duties on a trial-and-error basis. Though her present Land Administrator is well-versed in office procedure and the *Code*, Zaiton hesitantly summed up her immediate boss, the Assistant Land Administrator in charge of the revenue section, with whom she has day-to-day working relations, as being the direct opposite of the former and incompetent.[75] Though not necessarily always true in all circumstances, Zaiton's portrayal of superior officer incompetence, total lack of supervision as well as the general apathy and resistance to change are but another dimension of the working scenario.[76]

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74 Interviews: Haji Baderi,Yasin and Zaiton.

75 Interview: Zaiton. Despite the short exposure, Zaiton claimed that instead of her consulting the immediate boss, it was him who consulted her. Note: With the consent of the Land Administrator, the researcher had on three occassions arranged for an appointment to interview Zaiton's immediate boss at his office. He first agreed to be interviewed on 6 July, 1994 but then relayed a message through an office assistant that the interview be postponed to the afternoon of 10 July, 1994. The interviewee failed to turn up at the office for the entire afternoon (2.00 to 4.15 p.m.), this time without explanation or suggestion for a postponement. When the researcher came to interview the Land Administrator herself the next day, Zaiton's immediate boss refused a further appointment. Nevertheless the Land Administrator's and her other officers' kind co-operation in the research is here acknowledged.

76 Nor (interview) complained of the failure of authorised officers to safeguard the office's computer passwords, thus leading to unauthorised access to the system. Hasnah Yeop (interview - 5 August, 1994) admitted to the lack of close staff supervision by superior officers and Hashimah (interview) and Husin (interview), emphasised the need for supervising officers at the level of assistant land

Views from the Ground: The Land Proprietors.[77]

A variety of responses were offered by categories of landowners when posed the question of why they failed to pay their rents or failed to pay them on time. Chan, who owned two lots of land in Ceras, did not offer any explanation. Having admitted to being in arrears for both lots for over three years, he did not seem to mind being penalised for paying after 31st May.[78] Low, of Sungei Besi, pleaded to being 'too busy' and preoccupied with his business. Paying the land rent did not appear to be high on his list. Not only was he unable to come and pay, he even claimed to be unable to spare any of his workers to go and pay the rent on his behalf when it had already fallen in arrears. A similar explanation was given by Johari, of Skudai, who had defaulted for two consecutive years. He did not seem to be bothered by the default, believing that the land office would not mind arrears of one or two years. Both, despite admitting being aware of their obligations as landowners and having an inkling of land office procedures which might even lead to forfeiture of their lands, were confident that any move on the part of the land office to take drastic action would likely be preceded first by the sending of reminder letters to them. Johari imagined it to be similar to the sending of bills, letters of advice or reminders by a utility supply agency before cutting off supplies to defaulting consumers.

It was a different story for Hashim, a university graduate and civil servant. Being a senior administrator, he claimed that he had previously taken the initiative of sending his rent payment through the post before 31st May by means of a postal money order but the payment was rejected by the land office and sent back to him. He understood later that the

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administrators to acquire more technical skill and be well-versed in land legal matters.

77 Interviews: Chan, H.H.; Low Tooi; Lee, S.H.; Hashim, H.; Gee, T.T.; Ah Mooi; Chong, Y.S.; Raja, S. - all on 27-28 July, 1994; Johari, A.; Mohd Nor, A.; Pang, A.K.; Yee Nyok; Fuar, C.S.; Khor, A.T.; Muthu, S. ; Peter, K. - all on 6-8 July, 1994; Pak Su, Cikgu Nik Lah and Mek Nab - all on 2-3 August, 1994; Datuk Andika Indera Ishak bin Muhammad 'Isa, on 3 August, 1994; and, Datuk Haji Hassan bin Ibrahim on 27 August, 1994;

78 The annual rent for his residental lot was only RM66.00 but he had to pay a total of RM293.50, being the amount in arrears for 1990-1993 plus a penalty fee of RM38.70, and, for his commercial lot, he settled the RM2,014.70 due including RM262.10 penalty which itself amounted to more than 50% of his annual rent of RM489.00.

rejection was due to the fact that under the *Code* payments received by the land office on or after 1st June are in arrears and are liable to an additional penalty fee.[79] Hashim's payment had been rejected because it did not meet the full amount due, including the penalty fee. As he was soon after on work transfer which took him some sixty miles away to Seremban, Hashim did not pursue the matter until some years later when he was transferred back to Kuala Lumpur. Admitting to having a cursory knowledge of the possible consequences to his land of the non-payment of rent, Hashim was anxious to know the 'cut-off period or length of years in arrears' which would trigger forfeiture action by the land office. Hashim's anxiety was shared by Pang, of Plentong, who came to pay his rent after having been served by the land office with a Form 6A notice of demand.[80]

Lee, of Setapak, brought a different dimension to the rent defaulting issue. He explained that he had neither occupied nor let out the house he bought from a developer and that it was not yet officially registered under his name. Pleading ignorance of the law, he claimed that he would have paid his rent if advised to do so, but the fact that it remained unpaid was because he was waiting for the rent bill from the land office. This was also the view of Gee, of Kepong, who claimed that unlike in the past, he has yet to receive the latest rent bill from the same land office for the house he bought from a finance company. He could not understand why rent bills were not sent to him now. *Cikgu* (teacher) Nik Lah who had bought a house from a Teachers' Housing Co-operative Society in his home district outside Kota Baru, and Chong, of Cheras, cited similar circumstances. Chong especially had been in arrears for over six years since 1988. Having now occupied the house, Chong recently paid the whole sum in arrears together with a further penalty the total of which exceeded his annual rent of RM120.00. But Chong claimed to be not aware of the possibility of his property being forfeited under the law. Almost in the same category were Peter, of Sedenak, and Raja, of Bandaran, who blamed housing developers from whom they bought their houses for not making it clear to them whose responsibility it was

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79 The *National Land Code* specifies that rent is to be wholly paid by 31st May. It could be that by the time Hashim's money order was received by the said land office, it was short of the total amount due inclusive of the late payment penalty and was rejected.

80 Pang was served the 6A despite his arrears being only a year old and amounting to a mere RM24.00. He paid a total of RM39.00, RM5.00 being the late penalty fee and RM10.00 being for the service of the 6A notice fee.

to pay the land rent upon the conclusion of a purchase agreement.

Ah Moi, also of Cheras, though only a housewife, admitted that her annual land rent of RM44.00 was 'small'. But since the house was built on the lot which she jointly owned with one Ong, who had since died, it took her quite a while to be persuaded by her solicitors to pay the entire outstanding amount. She was initially reluctant to pay insisting that a portion of the payment be borne by Ong's beneficiaries. She finally caved in after being assured by her solicitor and Ong's sister that if she was willing to pay the full amount, they would facilitate a smooth transmission of the property and the registration of its title in her name. Essentially over the same subject of amount, Yee, of Pulai, claimed that the 'small' and 'insignificant' amount of rent had contributed to its payment being 'overlooked' by landowners. Arguing his case further, Yee brought it into contrast with his monthly telephone bill which was far 'bigger' and more 'significant'. Considering the deposit which he had to pay for the line and service facilities or the re-connection fee and the inconveniences caused by the sudden disruption of communication should he ever be penalised for disregarding payment of his bill on time, he emphasised that defaulting landowners generally never felt threatened by any sense of loss or deprivation of their 'landed' property. To him and others, even the threat of forfeiture would generally be taken lightly, especially by individual landowners, for not only would the process, if it ever materialised, be time-consuming, it would also be proven inefficient unless its commencement were meant to recover a huge amount running into thousands of *ringgit*s. To overcome the recurrence of such situations, Yee suggested that wider and more flexible arrangements should be made to enable payment of rents at post offices and commercial outlets such as banks and financial institutions, and for the land office to seriously consider accepting advance payment of rent, say for a lump sum period of between five and ten years.[81]

Mohd Nor, of Tebrau, Phua, of Bandar Tun Razak, and Muthu, of Mount Austin,

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81 Taking his case as an example, Yee emphasised that a rent debt of RM24.00 a year would not be a significant enough amount to drag one into a sense of guilt or obsession. A bigger amount may. But, if facilities were provided for landowners like him to pay a lump sum of RM240.00, i.e. for ten years in advance, Yee was confident that many would come forward to opt for such an arrangement.

also blamed their arrears on their respective land offices for not sending them rent bills. Claiming to be a reliable client and responsible consumer, Mohd Nor stressed that he was a prompt payer for whatever facilities provided or services were rendered provided the bills, notices or payment advices were sent to him. But, like Pang, of Kulai, who pleaded ignorance of the law requiring him to pay the rent before 31st May, Mohd Nor explained that he was 'a first timer having only a year owned a piece of land.' Both rejected the notion of 'ignorance of the law is no excuse' contending that such a notion ran counter to the spirit of 'consumer-friendly and client-oriented administration.' This slightly differs from Khor, of Senai, who claimed that he knew of the 'by May' requirement only in general but was not aware of the 'by the *31st May* dateline.' Having been made aware by the researcher of the dateline and its possible consequences, Muthu, while not feeling guilty for not having paid the rent earlier, now acknowledged that its non-payment would indeed be a risky gamble for 'even though the amount in arrears is small, the dire consequences could be serious and regrettable.' In contrast, Khor, of Mukim Tupai, admitted to being habitually late in settling all his bills. To him, the simple explanation was that so long as he could invest his money for prospective better returns elsewhere, he would rather did so than pay his land rent at the beginning of the year. The tendency of landowners to form a habit of paying late often lead to a situation where the amount of rent in arrears or the penalty fees imposed due to it far exceed the original amount of the annual land rent itself. Things come to a point when the by then huge amount outstanding makes it extremely difficult for the proprietors to settle (See Table 4.7).

Table 4.7. : Samples of Individuals' Land Rent Defaults and the Implications on the Final Amount Payable.

Defaulters	District / Mukim	Current (RM)	Arrears (RM)		Penalty Fee (RM)	Total (RM)
			Years	Amount		
Kartinah, R.	A, Johore	8.00	1988-93	48.00	9.60	65.60
[c]Abdul Hamid, Z.	A, Johore	8.00	1984-93	80.00	16.00	104.00
Rahmat, M.S.	A, Johore	8.00	1985-93	72.00	14.40	94.40
Chan, H.H.	KL	489..00	1990-93	1,268.60	262.10	2,014.70
Hashim, H.	KL	134.00	1992-93	576.00	151.30	861.30
Chong, Y.S.	KL	120.00	1988-93	480.00	127.50	727.50

Source: Revenue Unit Files, Land Offices: District A, Johore and Kuala Lumpur.

Pak Su, a near octogenarian, of Padang Pak Mat, who, like every year in the past chose to come personally to pay his rent at the land office, was perhaps the most straight-forward. Unless incapacitated by ill-health, he confided that for the 'sentimental values' which he attached to his only inherited property, he would pay the rent himself than to trust it to others to do, including his children or grandchildren. He simply thought that it was okay to come and pay the rent at the land office any time in the year. As a regular late-payer Pak Su did not grumble over the penalty fee imposed on him and despite his past memories of pieces of lands being auctioned under the previous land law 'many years ago' he seemed absolutely certain that 'the Government nowadays will never forfeit a *rakyat*'s land.'

Datuk Hassan, a retired very senior civil servant, with grassroots experience as a former District Officer but now directly involved in the private sector, believed that as far as rent collection and arrears recovery is concerned, land offices needed to be more pro-active and aggressive. Expressing his strong reservations about forfeiture of land, he argued that such a recourse would not only not solve the problem but give rise to further social complications and political consequences. Claiming that Land Administrators generally lacked initiative, he stressed that they should be more client-oriented in their approach and reach out to the public by providing more payment facilities, organising field collections, which would also serve as useful feedback, and devising incentives which would encourage proprietors to come and pay their rents. Insisting that 'sending of reminders, of whatever sort, is a must,' he urged that they introduce clear mechanisms for advance payments and update their computer software to overcome legal or accounting constraints.

Closely similar to Datuk Hassan's views were those of Datuk Andika Indera, an 89-year-old retired State Secretary of Trengganu, who dismissed 'today's [Land] Administrator's reluctance' to organise field-collections, regardless of the reasons, as ludicrous and totally unacceptable. Incidentally, Datuk Andika Indera's contention that 'the land office is there to provide a service to the people' underlined Mek Nab's explanation for her default. She failed to understand why the land office did not 'visit' her village in

district B, Kelantan, to collect the rent as they had done in previous years.

The above are simply random views from a cross-section of the public or those who, with the exception of Hashim, *cikgu* Nik Lah, Datuk Hassan and Datuk Andika Indera, are either self-employed or employed in the private sector. But other than those interviewed, office records made available to the researcher showed that included among the defaulters are senior and experienced public officials including both serving and former land administrators and members of their families. Among these officials are, a serving Chief Minister,[82] a former Chief Minister,[83] an elected member of a state assembly,[84] a young recently retired Assistant Registrar of Land Titles of the same state,[85] a state Chief Police Officer,[86] a former Assistant Land Administrator currently serving as a District Council Secretary in the same district,[87] the wife and in-laws of an Assistant Land Administrator[88] and a Director-General of a federal department.[89]

Many of the views recorded by individual landowners are shared by those representing bodies corporate. Ooi, Lee and Eddy, representing companies involved in major land development schemes, are all agreed that the rate of rent payable by them is low. They also admitted that it would be grossly unfair and superfluous for estates or major companies like theirs to blame the amount of land rent payable, as causing financial hardship. This was for the simple reason that even though hundreds of houses built by their companies remained unsold, the aggregate value of the properties far exceeded the total amount of rent payable and it was for the value of the lands that their companies were able

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82 Interviewee a Senior Assistant Land Administrator (anonymous).

83 Interview: Narimah.

84 Interview: Haji Baderi.

85 Interview: Haji Baderi.

86 Interview: Narimah.

87 Interview: Daud.

88 Interview: Narimah.

89 Interviews: Haji Munawir and Wati.

to secure their financing. All three were fully aware of the legal implications of their non-payment of the land rent and the liability of the lands to forfeiture. With the exception of Eddy, who emphatically denied that his company had ever been in arrears of rent, both Lee and Ooi admitted that their managers wese used to fines and penalties for late payments not only as regards land rent but also for other outstanding loan commitments.

Lee's manager seemed unperturbed and regarded being fined as something 'quite normal.' Despite not knowing the exact circumstances under which the land office would be spurred on into commencing forfeiture action, her manager was more prepared to take the calculated risk of investing the company's monies in a more profitable venture than to pay its debts. Ooi who claimed that she had only a couple of weeks back paid the land office some RM26,000 for 38 of her company's over 400 lots, frankly confided that as far as the balance of the arrears was concerned, she was quite helpless for, when she recently reminded her manager-proprietor of the possible forfeiture of the company's lands, which had been in arrears for over 13 years, the boss simply retorted, 'go ahead and forfeit.'

Eddy, on the other hand suspected that the land office's records were unreliable and that the office was not capable of accepting bulk payment for thousands of lots. He contended that in order to help ease the problem, he had entered into a special arrangement with the land office to enable his payments be made 'in batches of a hundred lots per each bill' and special clerical staff had been assigned for that purpose. He confessed to being deeply surprised when told by the researcher that his company was one of those identified as still having rent in arrears for at least three lots of land. Eddy blamed it on the land office's 'utter confusion.'[90] As a marketing executive of a company involved in the

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90 On realising that Eddy's company, PJSB., was the developer of a satellite town named after it, the researcher, on 12 July, 1994, brought along three copies of rent bills indicating the company being in arrears and spent almost a day commuting to and from the company's office, the district A land office and the State Director of Lands and Mines, Johore to verify the case. The researcher encountered initial problems in locating PJSB's office. Tracing the company's address to a shop-house as printed on the rent bills, the researcher found it locked and unoccupied and was advised by the next door shopkeeper to look for it at another location about two miles away. The second address happened to be a bookmaker's outlet already in operation for over three years. The bookmaker operator suggested that as the 'PJ' satellite town a couple of miles away was still under construction, the best try would be to go to its site office. It was there that the researcher met Eddy who readily agreed to be interviewed. Then came the question of the rent bills (for HSDs 0064387, 0064393 and 0064394 totalling RM168.00). Without even wanting to check the details, Eddy confidently claimed

development of some 14,000 lots, Eddy suggested that the land office provide written reminders to all new house-buyers in respect of their land rent obligations.

In instances such as the above, where lands are usually charged to the banks or other financial institutions, the land office has at its disposal another recourse under the law which it can resort to in order to recover the rents. If it serves a notice of demand in Form 6A (after this the 6A) to the bank or the financial institution to which the land is charged, apart from serving the same on the defaulting registered proprietor/s, the chargor is legally bound to pay the whole sum in arrears within three months of the date of service. If the chargor fails to settle the amount due, the land office is empowered to proceed with further forfeiture action on the land. [c]Ali, as a bank branch manager, and [c]Abdullah, as a credit officer attached to the non-performing loan section of their bank's headquarters, acknowledged their awareness of these provisions under the *Code*, even though the technicalities involved 'are not within the knowledge of every bank officer.' Despite that, [c]Ali persistently held the view that it was the responsibilitty of the proprietor to pay the rent as spelt out in the annexure document to the loan agreement signed between the prorietor and the bank. Therefore, in normal circumstances, he would choose not to pay the arrears and insisted that with the exception of cases of bankruptcies, in which all related matters are referred to the appointed receiver, if any, he would have to refer to his headquarters for further authorisation if the land office finally commenced forfeiture action. But he confidently predicted, 'the land office will not such take drastic action.'

[c]Abdullah, on the other hand, was more cautious, saying that despite cases of forfeiture which the bank had experienced in the past, he was quite certain that the land

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that all rents due had been paid as early as in February. Giving the researcher his telephone numbers, he suggested that records at the land office be checked properly, failing which he was prepared to furnish the researcher with copies of the payment receipts. Twice the researcher went to the district A land office and twice to the SDLM office which happened to be on a different floor in the same building. Records in both offices still showed the respective lots in arrears. After a telephone call to Eddy who quoted specific receipt numbers, the researcher went back to the SDLM office and requested the assistant SDLM for a final check. After about twenty minutes, the assistant SDLM confirmed that the rents had indeed been paid. He admitted that the payment, though made in February, had still not been keyed in into the computer in his office. As such, the data at the district A land office still showed the titles to be in arrears. He went to great lengths to explain the procedures involved in his office's data updating processes. Eddy's and the assistant SDLM's co-operation is hereby acknowledged.

office would usually send reminder letters well in advance, advising the bank to pay. Both officers, however, were also aware that if the bank were to pay the arrears, it could still have a chance of recovering the amount paid to the land office by applying, as chargor, either to the Land Administrator or the High Court, for foreclosure of the said land. 'Ali cited this recourse as entailing a long and tedious process. Despite it being within his power as branch manager, to undertake the action, 'Abdullah argued that resorting to such a method would be the last thing the bank would opt for. Apart from the technicalities involved, the usually lengthy process of the foreclosure of the affected land would seriously depreciate its market value, the amount recoverable might fall short of the desired total and the entire exercise might adversely affect the bank's reputation. Surprisingly when probed by the researcher about the case involving the company SJAE, which had been in arrears of RM86,411.00 since 1982, 'Abdullah paused for a moment, asked to be excused for a few minutes to check the relevant files, and came back saying that as far as his office records showed, the land office had still not served the bank the Form 6A notice.[91]

Speaking on behalf of the banks as chargors both officials were articulate in their reasonings of the bank's position. But they were unable to and did not offer any explanation of cases of banks themselves being the rent defaulters. As examples, in two cases in District A Johore, a bank,UMBCB was in arrears of RM65.60 whereas in another, BSB was in arrears of RM131.20. Both were in arrears over the same period of five years from 1988 to 1993 with the current rent of the first being only RM8.00 and the latter RM16.00. [92]

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91 This was a case involving a housing developer in arrears of rent for 392 titles in district A, Johore. Zaiton (interview), claimed that she had only the previous week given to one NS the full list of land titles in arrears of rent belonging to SJAE together with a reminder letter that payment be made within three weeks. NS was previously known to her as the bank's credit officer responsible for overseeing SJAE's loan. It was her hope that by giving the relevant documents to NS, the latter would help ensure SJAE's payment, failing which the bank would intervene to settle it. Unfortunately, Zaiton neither kept a copy of the list nor the reminder letter concerned. 'Abdullah Kasim, about three weeks later (interview: 28 July, 1994) confirmed that NS was the former credit officer and his colleague in the bank's non-performing loan section who was responsible for overseeing SJAE's loan but had about six months earlier resigned to join SJAE. Since there was no evidence to show that that bank had ever been served with the Form 6A or had been in receipt of a reminder letter from the land office, 'Abdullah suspected that NS might have 'deceived' Zaiton by falsely identifying himself as still being the credit officer of the bank and was acting on its behalf.

92 Interview: Zaiton.

Another category of rent defaulters are government agencies and public statutory bodies.[93] Apart from admitting to their own lack of details due to poor record keeping, Daud frankly admitted that under normal circumstances, as an administrator of a Local Authority he would deliberately leave the Authority's rent unpaid on three grounds. Firstly, for the lack of office funds he would give low priority to the settlement of debts owed to other government agencies, including the land rent. Secondly, he was of the belief that the land office would not take drastic action against his office for, as a State establishment, both his office and the land office were ultimately responsible to the same person, the State Menteri Besar. Finally, Daud admitted, his office would only pay the arrears if the land office continued to be persistent in its demand. Interestingly, Daud claimed that his was also the 'general mentality' of others of his colleagues serving in various other government establishments.

The Land Rent Arrears: An Inquiry into Some Aspects of Its Recovery.

a) *The Issue of Rent Bills.*

It is difficult to arrive at an accurate figure for the total of land titles in Peninsular Malaysia. Despite its being immovable, land as a dynamic property is continuously involved in dealings and processed for further development and enhancement of value. Fresh alienations mean the issuance of a number of new titles. The number would be affected by

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93 In a study carried out in 1981, it was found that out of 1.003 million acres of 'Federal Government lands,' 80,737 acres or 4,486 lots were in arrears of RM1,015,503.79, and of this, 36,153 acres or 520 lots totalling RM442,359.00 were lands used by the Minstry of Defence (see Appendix 4.6 for details). In view of the substantial amount, the Federal Department of Lands and Mines proposed that the Federal Government be asked to pay the States annual grant in lieu of quit rent [State Directors of Lands and Mines Meeting, Paper No. Bil. 30/81: 'Cadangan Bayaran Caruman Tahunan (Annual Grant in Lieu) Sebagai Menggantikan Bayaran Cukai Tahunan Bagi-bagi Tanah Yang Didaftarkan di Atas Nama Pesuruhjaya Tanah Persekutuan, Malaysia'] but the proposal has still not materialised. Note: 1. As in the case cited, there are six ways by which lands are alienated to the Federal Government: (i) by alienation in perpetuity (18,000 acres of the above), (ii) by alienation of lease (13,000 acres), (iii) by occupation of land prior to Independence in 1957 (900 acres), (iv) by reservation of 'Federal lands' under the *Code* and under previous laws prior to the *Code*, (v) by declaration of State lands for 'military manouvres under Cap. 43' (8,000 acres), and (vi) by licence of temporary occupation of land (TOL - 400 acres). A total of some 517,000 acres of land were alienated under the last three types for which there were no titles issued to the Federal Government, and as no quit rents or compensations were payable, it tantamounts to States' loss of revenue.

the outcome of partitions or subdivisions, compulsory acquisition, amalgamation of parcels of land, expiry of leases, forfeiture of alienated land, and many other circumstances. But a 1993 estimate puts the total number of titles at 4,180,061.[94] As examples, depending very much on the pace of development, land titles in Taiping, Perak, increase at the rate of 2,000 titles a year for the last fiver years whereas in District A, Johore, the number was estimated at 6,000 annually. At the same time, the number of titles in arrears of land rent too varied from place to place. In District B, Johore, at least 4,260 titles or 11% of the 40,300 titles were in arrears in 1993, while in one *mukim* alone in District A in the same state the number was estimated at 10,000 or 20% of the total of 50,000 title. In Kuala Lumpur 40,000 or 28% of the 143,000 titles, and in the whole of Terengganu no fewer than 82,000 or 31% of titles were in arrears over the same period.[95]

Though the above represents figures from only three states, it reveals a considerable number of titles in arrears throughout the Peninsula and the fact that the percentages of all titles was as high as 31% makes the estimates of 20% current rents slipping into arrears appear conservative.[96] This reflects a disturbing trend of recurring arrears that can only be checked by swift and effective recovery action on the part of Land Administrators. To prepare, print and ensure that all its rent bills are ready prior to the commencement of a new calendar is a land office annual routine and does not normally pose much of a problem. But problems are immediately encountered by the office when, as 'generally expected,' it attempts to send the bills to the respective proprietors. Despite it not being mandatory under the law for the land office to send the rent bills, it has always been the administrative initiative of some land offices to do so. Nevertheless incomplete office records, in particular a lack of addresses of proprietors, make it impossible for the bills to be sent to all. Subject to the availability of the addresses, Haji Radzi, Tini and Normah estimated that they were able to send the bills to only about 55-65% of proprietors, while bearing in mind that a certain percentage of those sent would be unsuccessfully delivered and returned. The remainder of the bills, prepared and printed but not sent for lack of addresses, were kept

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94 See Appendix 4.7.

95 Interviews: Razali, Narimah, Tini and Haji Munawir.

96 See footnote 71.

in the land offices and issued to individual proprietors upon their coming to the office to pay. In their attempts to reach out to as many proprietors as possible, to remind them of their obligations and to urge them to pay their rents, land officials resort to billboard advertisements, local radio broadcasts, Friday sermons in the mosque, civic gatherings and newspaper campaigns.

b) *The Issue of Field Collections.*

To further facilitate payment, land offices usually organise field collections especially to isolated rural areas difficult to reach by public transport. Unfortunately none of the districts studied by the researcher had organised field collections during the past two years. The Senior Assistant Land Administrators of Districts A and B, Kelantan, admitted that they were not very keen on field collections. To Ludin the exercise did not bring about the desired effect on the recovery effort, an argument strongly shared by Hussien who claimed that from his experience only a maximum of 10% would be recoverable. Different arguments were offered by their counterparts in Johore and the Federal Territory. Razali did not see the necessity for field collections since all areas within District B, Johore, were easily accessible by road, the furthest distant being only twenty miles away. Zaiton confided that though she was eager to organise one, she was not in a position to do so for there was only one cashier in the District A, Johore land office. She could not afford to deploy her cashier for the field collection if one were to be organised and contended that for any other official to accept payment would contravene basic financial procedure. This, she was not willing to do. As for Yasin, instead of organising field collections he would rather opt for the stepping up of campaigns from one government department to another to educate land proprietors among civil servants on their obligations and to encourage them to come personally and pay their rents at the Kuala Lumpur land office.

The slowing down of the momentum for field collections gives rise to the question of whether or not there are specific directives from state higher authorities to the district land offices to undertake such measures. In the case of Kelantan, Haji Khalid, as the State Director, emphasised that the districts were directed to undertake field collections in order to achieve the 1994 collection target, set at 90% for the current rent and 50% for the

arrears. As of June 1994, the state achieved collection averages of 71% for current rent but only 18% for arrears. Haji Khalid did not seem unduly disturbed by the realisation that his directives with regard to field collections had generally gone 'unheeded.' He instead agreed that the failure could have been 'partly due to poor response' by the public as experienced by the land offices in the past, and estimated that such efforts, if undertaken at all, could possibly result in only a further 5% increase in the total amount of rent collectable. As for Johore, Haji Baderi explained that a target of 80-85% overall collection average had been set in 1992 together with the directive that all the land offices in the state ensure the correctness of their yearly base opening figures. Land offices of big districts were also directed to carry out field collections. Specific directives were given for further drastic steps to be taken by the land offices to recover rent arrears. As a result, Haji Baderi claimed that with effect from 1993 base opening figures for all land offices in the state had been verified and the rent collection progress successfully monitored monthly in 1992 and quarterly in 1994.

c) *The Issue of Reminder Letters*.

The question as to whether or not directives, be they general for the improvement of rent collection or specific for the organising of field collections and further follow-up actions, were actually issued by the State Directors to their district Land Administrators and whether or not such directives, if any were given, filtered down to lower level subordinates in the land offices so as to provide them with clear, concise and effective guidelines, is another issue.[97] To a certain extent, however, this can be gauged by the measures adopted by the different land offices under study. To enable the recovery of rents which had fallen in arrears on 1 June of the calendar year, the *Code* provides for the

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97 Compare Haji Khalid's and Haji Baderi's views with those of their subordinates. Ludin and Muhammad claimed that there had only been verbal directives by the State Director for the general improvement of revenue collection but there was nothing specific about it. Hashimah, on the other hand, was of the conviction that since there were ready guidelines, she did not feel specific and detailed instructions were at all necessary for 'after all we are answerable to queries by the Audit [Department] and the Public Accounts Committee.' On the issue of 6A, both Razali and Zaiton claimed that they had submitted their monthly progress reports to the State Director's office but the latter also claimed that the SDLMO never seriously queried the implementation progress of the 6A demand notice.

issuance and service by Land Administrators on the defaulting land proprietors of a notice of demand of rent in Form 6A. There is a near consensus among land officials, however, that instead of 6As they were inclined to send the defaulters 'reminder letters', though there is no legal provisions for this. In District A Johore, reminder letters were sent 'as was the usual previous practice', whereas in District B of the same state this step was taken as a prelude to 6A 'so as to give the defaulters the opportunity to settle their arrears' a couple of weeks before the land office embarked on more drastic action. It was also regarded as the 'softer approach to appeal to the defaulters' in District A Kelantan, whilst to the District B Kelantan land officials reminder letters were the much preferred option because 'the 6A [process] is very complicated.' As for the Kuala Lumpur Assistant Land Administrator who claimed to have sent some 40,000 reminder letters in 1993 alone, the reason for his doing so was to be in line with the 'advice by the Ministry [of Lands]' for as compared to the issuance of 6As, reminder letters 'are easier to withdraw by simply tearing them off, throwing them away or extinguishing them from the office files and records.'[98]

Through their efforts in 1993, the Kuala Lumpur land office claimed to have successfully reduced that year's arrears by the significant amount of RM14 millions, and spurred on by that the office in 1994 concentrated their efforts on sending similar reminders to 19,000 proprietors. As no other details are available, it is difficult to ascertain the exact number and percentage of proprietors who actually responded to the reminders in 1993. In comparison with Kuala Lumpur, as of April 1994 the District B Johore land office in 1993 identified 4,260 titles in arrears amounting to almost RM1 million. Within a period of seven months from January to July of the same year 315 reminders were prepared out of which 267 were delivered to proprietors. The exercise ended with 71 proprietors, or 1.67% of the original 4,260 defaulters, settling their arrears which, however, accounted for only RM13,010.70 or 1.34% of the years's total arrears. A similar exercise was conducted the folowing year and as of April 1994 out of 453 reminders only 13 proprietors or 2.9% responded with payment. But the amount received did not have any considerable effect on the overall total of rent arrears. Other than sketchy information, officials of the three other land offices under study were unable to furnish ready details on

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98 Interviews: Zaiton, Razali, Ludin, Wati, Husin, and Yasin.

their reminder letters exercise (see the following Table 4.8).

Table 4.8. : Progress Report of Reminder Letters, Land Office District B, Johore, 1993.

Month	Titles in Arrears		Reminders Prepared		Reminders Delivered		Reminders Ending With Payment	
	Nos.	Amount (RM)	Nos.	Amount (RM)	Nos.	Amount (RM)	Nos.	Amount (RM)
January	4,260	971,985.50	54	19,696.40	35	6,080.40	6	548.80
February	4,254	971,436.70	100	16,953.80	90	14,893.10	17	3,062.40
March	4,237	968,374.30	13	1,522.10	10	402.40	7	876.60
April	4,230	967,497.70	30	6,516.70	27	4,588.70	13	1,820.00
May	4,217	965,677.70	48	85,347.90	38	24,633.30	13	4,922.50
June	4,204	960,755.20	35	4,041.60	33	2,686.40	10	1,113.20
July	4,194	959,642.00	35	4,706.80	34	4,649.20	5	667.20
Total			315	123,435.00	267	57,933.50	71	13,010.70
%			7.39		6.27		1.67	1.34

Source: Revenue Unit, Land Office: District B, Johore.

In the case of District B Johore the reminders were accompanied by a 'grace period' of two weeks for the proprietors to settle their arrears, whereas in the case of Kuala Lumpur no specific time frame was set. In both cases however, it finally depended on the discretion of the land administrators whether or not to pursue any further action against the proprietors who failed to heed the reminders.

d) *The Issue of Notice of Demand (Form 6A).*

If they have already exhausted possible administrative avenues but still find the result short of the desired effect, land administrators are at this juncture duty bound to resort to legal provision under the *Code*. Rightly all those who have failed to pay are properly speaking liable to service of a demand notice in Form 6A but, partly as a result of manpower constraints, Land Administrators resort to being selective. This is done by their deciding first on the criteria by which the defaulting proprietors are to be served 6As. As in the case of the reminder letters, the amount and/or length of rent in arrears formed

the main criteria for the preparation and service of 6As also. But exact details of these 'selection criteria' differed among officials and from one land office to another.

Table 4.9a. which follows show that within District B (b) Johore, a junior official who directly supervised the administrative assistant responsible for preparing the 6As regarded RM300 or three-year arrears as the cut-off point for a proprietor to merit the service of a demand notice, whereas, to the Senior Assistant Land Administrator in the same office the length of time in arrears was the all-important criterion. In this respect

Table 4.9a. : Samples of Demand Notice Criteria, Land Offices: Kuala Lumpur, Districts A and B Johore and Districts A and B Kelantan,1993.

District / State	Rent in Arrears	
	Amount or Length Arrears	
FT Kuala Lumpur	RM 1,000	-
District A, Johore	RM 1,000	Five Years
District B, Johore (a)	-	Four Years
District B, Johore (b)	RM 300	Three Years
District A, Kelantan	RM 1,000	-
DistrictB, Kelantan	RM 500	Ten Years

Source: Yasin, Zaiton, Haji Rashid, Razali, Ludin and Husin (interviews).

District B Johore [both (a) and (b)] differed from District A Johore, and both differed from the criteria adopted by Districts A and B Kelantan. Table 4.9b below indicates the different criteria adopted not only between the states but also among different levels of officials

Table 4.9b. : Samples of Demand Notice Criteria: the States of Kedah, Terengganu, Johore and the Federal Territory, Kuala Lumpur, 1993.

District / State	Rent in Arrears	
	Amount or Length Arrears	
Perlis	RM 1,000	Five Years
Terengganu	-	Five Years
Johore	RM 1,000	Three Years
FT Kuala Lumpur	RM 1,000	-

Source: Offices of the State Director of Lands and Mines: Kedah, Terengganu, Johore and the Federal Territory, Kuala Lumpur.

within the same states. The prevalence of these differences again brings into question the position regarding the State's 'directives and close monitoring' of the district land offices rent collection and recovery efforts.

Determining the selection criteria is only the beginning of more varied practice as regards the application of the 6A demand notice, which is the most crucial beginning to the entire rent recovery process. Unlike the previous purely administrative initiative in respect of the reminder letters, a land administrator needs to contemplate deeply before embarking upon Section 97 (Notice of Demand) of the *Code* in his effort to recover the rent in arrears. By invoking the said section a land administrator is fully bound to carry the recovery process right through to its very end, complying with all the legal requirements and consistently conforming to all their details. The 6A initiative, in a nutshell, signifies a 'point of no return'[99] for the commencement of forfeiture actions of lands for which the rent has not been paid within a stipulated period. Despite the clear legal provisions and the set procedures, variations abound among individual land administrators as regards the interpretations and procedural applications.

Applying his discretion, Ludin, who claimed that his office served 6As 'on every defaulter' in arrears of RM1,000 or more, explained that he usually granted the defaulters 'a further three month extension of grace period' in addition to the automatic three months legally provided them upon the service of the demand notice. He would not grant defaulters further extension[100] but on appeals he would normally grant them the concession of paying in two or three instalments. Like Ludin, Hussien whose cut-off point for the 6As was RM500 or ten years in arrears, also resorted to 'selective issuance' of 6As as a 'warning and deterrence' to other proprietors. Both mentioned the issuance of between 10 to 15 6As

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99 The phrase used by Tini, (interview) and Abas Saleh (interview: 21 August, 1994) which emphasised their understanding of the spirit of the law in respect of the commencement of the 6A action.

100 Zaiton (interview), claimed that her boss, the assistant land administrator, had the tendency of granting 'a further 21-day grace period' to the defaulters who upon the expiry of their 6A notices still defied payment of their arrears. She pleaded to not being aware of the 'basis' for her boss's decision. Tini (interview), spoke of similar observations. In her state too, reminder letters seemed much preferred over the 6As, to the extent that 'almost no 6As were issued in the past few years', and for the handful of the 6As that were served, further one or two months grace period extensions were given. According to her, 'over here we are not strict with 6As' and, for whatever reason she said she could not comprehend, 'everything is up to the land administrators' discretion.'

in a month, 80%' of which, they claimed, ended with payment. As a result of the overwhelming response they normally did not proceed with the remaining 20% who did not pay, for the exercise was deemed to have 'served its purpose.' Emphasising to the researcher that he was still 'monitoring the progress of last year's 6As,'[101] Hussien was prepared to accept the settlement in instalments of arrears, say of RM10,000 or more, over a period of ten years.[102]

At times the application of discretion tends to be misplaced and instead of its being the supposed exercise of careful judgment discretion becomes an avenue of personal convenience. As far as Razali is concerned, Abas, his Assistant Land Administrator had provided clear and definite directives for a 'smooth and free-flow' 6A exercise for District B Johore. Based on Abas' instructions, 6A was to commence immediately upon the expiry of a two-week grace period granted earlier to defaulting proprietors by way of reminder letters, and if the arrears remained unpaid on the expiry of the 6A three-month period, Razali was to supervise the issue of orders for the forfeiture of the affected land and subsequently the preparation and publication in the gazette of the notice of forfeiture in Form 8A. The problem lay not with Abas but with ʿIsa, the Notice Server. Having prepared the 6As, Hamimah, the Administrative Assistant responsible for the task handed them over to Razali to counter-check the details and submit them for Abas' signature. That having been done the forms were returned by Razali to Hamimah who then forwarded them to ʿIsa for service on the proprietors. The absence of a fixed schedule for ʿIsa to serve the notices became a major setback to the 'free flow process.' This almost amounted to the 6A exercise's fate being surrendered to ʿIsa's absolute discretion, and even Razali did not seem

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101 Interviews: Ludin and Husin. If ever a 6A action case is allowed to remain indefinite and not followed through to the end to be settled within the same calendar year, ending either in the arrears being paid or the land in question being forfeited, but, is instead allowed to protract into the next calendar year, the case will result in further legal complications.

102 Researcher's note: On the service of the 6A, the operation of sections 98 and 99 of the *National Land Code* take effect which altogether remove any 'discretionary powers' of the land administrator (i) to approve any further extension apart from the maximum three-month period already granted by virtue of the service of the 6A notice, or (ii) to approve any other mode of payment short of the entire lump sum of the amount then outstanding. In other words, any arrangement for payment of the arrears by means of instalment can only be administratively approved by the land administrator before the service of the 6A. It is legally questionablefor any land administrator to suggest that the payment period after the service of the 6A is up to their discretion.

to be in a position to monitor and ascertain the actual status of all the notices. Zaiton, Razali's counterpart in District A Johore, encountered the same problem. She found herself unable to supervise and deploy the Notice Server for her revenue section work, particularly in respect of 6As, since she had to share 'Isa's services with the rest of the other sections. Hence her explanation that despite some 1,500 6As which her office prepared in 1993, she was unable to ascertain the number sent, actually delivered, served or returned. Comparing her position with that of Razali, Zaiton considered herself unfortunate for, unlike Abas, her immediate superior officer was 'not very specific with his desired directives' and was prone to indecisiveness.[103]

With the exception of the Kuala Lumpur land office, where senior officials[104] readily admitted to not contemplating the service of 6As until their own office 'had been set in proper order,' the remainder of the land offices under study had, at one time or another,

Table 4.10. Notice of Demand (Form 6A) Progress Report, Land Office: District B, Johore, 1993.

Month	Titles in Arrears		6A Notice Prepared		6A Notice Served		6A Notice Ending With Payment	
	Nos.	Amount (RM)	Nos.	Amount (RM)	Nos.	Amount (RM)	Nos.	Amount (RM)
March	4,260	971,985.50	17	3,341.20	11	1,819.20	4	372.80
April	4,256	971,612.70	21	2,328.60	20	2,208.20	6	789.40
May	4,250	970,823.30	29	4,890.60	29	4,890.60	8	1,088.80
June	4,242	969,789.50	22	3,054.40	21	2,804.40	4	600.00
July	4,238	969,189.50	24	65,347.60	22	46,409.60	12	1,279.40
Total			113	78,962.40	103	58,132.00	34	4,075.40
%			2.65		2.42		0.8	0.42

Source: Revenue Unit, Land Office: District B, Johore, July, 1994.

carried out the preparation and service of 6As on selected proprietors. District A Kelantan had, under a different Land Administrator, once in 1987 forfeited a piece of land in arrears

103 Interviews: Razali, Hamimah, Zaiton and Narimah.

104 Interviews: Haji Munawir and Yasin.

of RM4,000. As a whole, however, again it was only District B Johore officials who were able to provide details of their 1993 6A exercise. Table 4.10 reveals a number of facts. Firstly, these were the only ready record obtainable from among the five offices studied. This was despite the apparent monitoring weaknesses as admitted by the officials concerned and as detected by the researcher. The fact that the reporting format is said to be prepared by the State Director's office establishes proof that there is some form of coordination and monitoring of a district's performance by the state level authority. But one is prompted to question the actual criteria for the issuance of 6As (refer table 4.9a) as applied by a given land office in the state. Since the length of arrears is not stated, only the amount being given, it is clear that the defaulters who paid had arrears which averaged between RM93.00 and RM150.00, which are way below the minimum criteria of RM300 set. The table also discloses the impropriety of issuing and serving 6As any earlier than May, for the law provides for any outstanding arrears to be settled by 31 May. Finally, the question may be posed as to whether or not it was worth the five month effort to recover almost RM1 million from 4,260 defaulters when the final outcome was a success rate of only 0.42% or a meagre RM4,075.40 of the total amount recoverable, with hardly 1% of the total number of defaulters responding positively.

e) *The Issue of Notice of Forfeiture (Form 8A).*

The next step in the 6A exercise is for the land administrator, upon the expiry of the three month notice, immediately to issue an order for the forfeiture of the land for which the rent has not been paid. This order is effected by the publication in the gazette of a Notice of Forfeiture in Form 8A. Despite 6As being irretractable, Zaiton and Narimah as junior officials failed to understand why their superior officers often failed to advise them to proceed with 8As. They contended that, even in a couple of isolated cases which were proceeded with, the final outcomes were 'mysteriously confusing' and inconclusive.[105]

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105 They cited one 'inconclusive' case involving a former Chief Minister and another, a 'mysteriously confusing' case affecting a land belonging to a State Agency but occupied by a Federal Department the status of 'forfeiture' of which was still quite indefinite. In the case involving the former Chief Minister, a 6A notice was served on him for rent default in 1989-90. But despite his inaction there was no follow up and Narimah was unable to trace the case any further. As for the second case, see footnote 108.

Tini too admitted that she failed to comprehend the actual reason why 'over here [in the State] they are not strict with the 6As.'[106]

As regards her application of the procedures, Normah explained that after the three month period of the 6A she would, by way of a minute in the file, leave it to the discretion of her land administrator to consider further extension if the defaulter appealed. If the appeal were turned down she would prepare an order of forfeiture, prepare the 8A for gazetting, and submit a copy of the 8A to the State Authority. As the defaulter 'has no recourse to Court,' upon forfeiture of the land, the State Director would advise the defaulter to appeal 'not for payment of the arrears' but 'for re-alienation' to him of the 'State land.' This, according to Normah was based on her experience in 1993 when upon the publication of the 8A, she sent the defaulter a copy of the gazette together with an application form for the re-alienation of the 'state land', advising the 'former' proprietor of 'his right to appeal against the forfeiture.'[107]

With the exception of a case of forfeiture of a quarry land in one of the states in 1992-1993 and another piece of land in another state two years earlier,[108] none of the officials of the land offices studied was in a position to provide the researcher with details of any issue of an order of forfeiture or of the publication in the gazette of an 8A notice of

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106 She even mentioned two cases in which the 6As were withdrawn midway with one ending with the forfeiture 'converted to acquisition' and the owner paid compensation.

107 Researcher's note: Unlike Zaiton, Narimah and Tini who are either junior officials or senior but ungazetted land officials, Normah is a gazetted Assistant Land Administrator. Like Ludin and Hussien, while part of her understanding of the legal procedures was correct, certain aspects were seriously misleading and erroneous. For example, her assertion that a defaulter whose land has been forfeited 'has no recourse to Court' is clearly against that very provision under section 134 of the *Code*. But given the fact that she was new in her land office post and had had no opportunity yet to attend a land course, her confusion is understandable.

108 This case involved a piece of prime land registered under the name of a State Agency but which had on it a building occupied by a Federal Department. The State Agency was served with the 6A notice of demand in 1991 with a copy of similar noticee sent to the Federal department. On failure of either party to pay, the 8A notice was processed and gazetted in 1993. The Federal Department appealed to the State Authority for annulment of the forfeiture and promised to pay the rent. The State Authority approved annulment of the forfeiture provided that the Department concerned paid five times the original amount in arrears. As the Department did not pay the whole amount, the then Assistant Land Administrator of District A Johore rejected payment. Both Zaiton and Narimah were unable to locate the file. As of July-August, 1994, neither were aware of the present status of the case and the land but the Federal Department was still in occupation.

forfeiture of land, if there had been any.

Land Rent Recovery: The Forfeiture Debate.

Under previous land legislation, there have been many instances of colonial and pre-independence land administrators resorting to forfeiture of land as a means of enforcing the law regarding the collection and recovery of rent. Nobody is yet in a position to determine the extent and the effect of the exercise either on the government, in terms of the amount of rent collected, or on the defaulters, whether the real effect of forfeitures be deterrent or punishment. The subject of forfeiture again comes under scrutiny but this time with regard to procedural provisions under the *Code*. A handful of cases of forfeiture referred either to the Court to challenge a Land Administrator's actions, or to the State Authority to appeal against forfeiture, are recorded. Data obtained from this research show that as a whole the number of forfeiture actions taken and the number of lands finally forfeited, are negligible. This confirms the Director-General's 'suspicion' of the prevalence of 'a general reluctance' on the part of land administrators to take forfeiture action against rent defaulters. Land officials at different levels of the administrative hierarchy have their own understanding, explanation or justification for such reluctance but two main arguments seemed to prevail at the surface *vis-a-vis* the question of 'cumbersome legal procedures' and 'the real on-the-ground-effect of a forfeiture.'

Haji Radzi, the Perlis State Director, confessed that forfeiture action is time consuming and highly technical. He claimed to have previous experience in Penang of a forfeiture having to be withdrawn. Though he did not elaborate on the actual cirumstances of the case, he was suggesting the idea of 'political interference.' On his contention of the process being time consuming, the State Director explained that right from the commencement of the forfeiture process land administrators will be submerged in highly detailed and cumbersome legal procedures which recent Court judgments demonstrated that land administrators are expected to fully comply with. If the Land Administrator's

forfeiture action landed in Court,[109] the case would usually be prolonged and could take a couple of years or more to be settled. Haji Radzi did not dismiss the element of a land administrator's 'fear of being challenged in Court.' But as his past experience showed, he emphatically suggested that failure to get support from 'political masters' may get a land administrator's forfeiture effort into trouble, and therefore even the timing of a forfeiture itself must not be seen as 'improper' by the politicians. He cited a case in Penang when the then Chief Minister directed a certain land administrator to 'retract the irretractable 6As.' Even in his present capacity he had had a number of 6As withdrawn and 8As cancelled.[110] As a safer way out, the State Director suggested that if a Land Administrator insisted on proceeding with forfeiture actions, then 'it is best to avoid all unnecessary hitches by preparing the list [of pending forfeitures] and obtain the support of the State Authority first.'

Haji Radzi's contentions about 'Court delay' also formed the argument of his counterpart in Kelantan. As the State Director, Haji Khalid, speaking from past experience also found the legal procedures too cumbersome, and that, in itself was enough to create some fear in the mind of any officer 'not trained to appear in Court' of becoming involved in the intricacies of summons and civil suits. He also argued that the length of time taken and delays in court hearings and decisions had caused the entire exercise to be of no effect on the offending defaulter. This he based on two to three such civil cases which are still pending in the Court after four to five years. In that respect, he viewed it as much simpler and more effective the previous land law which empowered Land Administrators to auction land as a consequent penalty for default of rent. The only reservation he had was that, by resorting to the auction, there was no certainty that land would not accumulate among the

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109 In terms of time consumed, a reference to the State Authority for an appeal against forfeiture would normally take far less than the filing of a suit in Court challenging the validity of a Land Administrator's actions.

110 Researcher's note: Under the *Code*, only the Court is empowered to issue orders to a land administrator to cancel the endorsement or memorial in respect of the 6As or the 8As from a title. But in the course of the study, the researcher was unable to obtain details of any such Court order.

rich and wealthy, depriving the poor of their only means of livelihood.[111] That aside, he readily admitted that in the past Land Administrators in the State were prone to receiving 'administrative directives from much higher authority' after 6As had been issued. Without clarifying who the 'higher authority' actually was, the State Director claimed that 'this pattern had been a practice of over ten to fifteen years', often resulting in repeated cases of issuance and re-issuance of 6As on the same defaulters which sometime took two to three years each without the certainty of any conclusive result. This to him partly explained land administrators' general reluctance.

In so far as the *National Land Code* is concerned the legal provision is very clear on the subject of forfeiture of land. The *Code* has provided land administrators with a forceful leverage to be utilised both as a serious deterrent as well as a saving mechanism to justify any seemingly drastic action. In other words, given extreme situations, no land administrator should appear helpless in the face of 'stubborn' defaulters for the *Code* has empowered them to forfeit the land of defaulting proprietors. Of course a high standard of compliance is expected of land administrators who contemplate resorting to such a recourse. The spirit of the law is also crystal clear, as while it enables Land Administrators to remove from a person his much valued property, it imposes on Administrators the onus to ensure that the defaulter is in not in any way victimised. It therefore remains a land administrator's choice whether or not to exercise forfeiture of land as his weapon of last resort in the performance of his utmost duty both to uphold the law as well as to ensure revenue due to the State Authority.[112]

Despite the seemingly clear-cut wide legal provision and administrative procedures

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111 Haji Khalid was more concerned with the effect of auctions in general. As for the Kelantan Malays, he contended that the *Kelantan Land Enactment of 1938* already provided the necessary legal safeguard against the falling of Malay holdings into the hands non-Malays. This view was also shared by Ludin and Dr. Nik Mohd Zain.

112 This diilemma of choice is aptly summed up in the advice rendered by the then Acting Commissioner of Lands and Mines to all Collectors of Land Revenue when he argued in 1929 that 'while it is important to collect arrears whenever possible there is no point in piling up costs and clogging up the Civil Court with suits which offer no prospect of financial success.' *ANM/P/PTG7*: 'Commissioner of Lands Circular 1928-32: Commissioner of Lands and Mines Circular No. 8/10929, 8 November, 1929 by G.E. Cator, Acting CLM, FMS.'

in performing their duty and exercising their powers under the *Code* Land Administrators are often left with limited discretionary powers and scope for manouvre. Apart from manpower constraints seriously disproportionate with their ever increasing workloads and rising public expectations, they have to recognise and address the presence of 'political authorities' within their midst. The situation demands of Land Administrators the careful exercise of their discretionary powers. As the *Code* too has provided clear delineation of jurisdiction between Land Administrator, State Director, State Authority and Court, it finally boils down to the discretionary wisdom of every administrator to weigh, decide and advise the State Authority whether particular 'interventions from and by any quarter' is legally justified for, despite anything, in the final analysis it is the administrator who is summoned by and answerable to the Court. Of equal importance, it is the responsibility of land administrators to ensure professionally that laws and procedures are given due regard and respected by all quarters. The above underlines the researcher's own curiosity as to the general reluctance of Land Administrators to resort to the provisions of the *Code* and the growing tendencey of unnecessarily referring, even surrendering, their powers and discretions to the State Authority.

Substantiated by the available limited data, this study fairly concludes that the number of 6As and subsequently 8As prepared, issued, served and finally ending with either payments or forfeitures, is not commensurate with the number of titles in arrears. Discounting for a moment the provisions of the *Code* and acknowledging the realities of the fact that a short period of arrears, say between one to three years, may not justify forfeiture, it is extremely difficult to understand why arrears of ten, fifteen or twenty years and more or those amounting to tens of thousands of *ringgit* are also allowed to remain dormant and left unsettled. Despite claims of 'clear and specific directives' from the State Authority or State level officials, the criteria for 'selection' for the service of 6As remain at the subjective discretion of each and every individual official at the district level. If being pragmatic were the argument for being 'selective,' the highly insignificant and negligible returns upon experiments in limited collection and recovery exercises, such as those highlighted in the case of District B Johore, pose the question of whether or not it was worth the effort at all.

CHAPTER FIVE

LAND RENT REVENUE ADMINISTRATION AND THE PROSPECTS OF ITS FUTURE .

Land Rent and the State.

Land rent and the justification for its imposition on individuals by the state was one of the matters deliberated by mid-eighteenth to mid-nineteenth century political economists[1] under the broader issue of land as a source of production. They focussed their debates on the distinct aspects of land rent and land taxation, the implications of land rent on production costs, the nature of the economy and society at large, and whether or not it is socially acceptable for land rent to be imposed by a state on its population. Of particular relevance to the present study is the argument as to whether or not land rent ought to be imposed, and thereafter regulated, on the basis of it being purely a source of 'public revenue' or as a consequence of 'benefits' enjoyed[2]

During the 1750s and 1760s, Francois Quesnay,[3] convinced that it was a non-destructive proposition, advanced the idea of the desirability of imposing rent on land as a way for governments to obtain revenue.[4] Quesnay's proposition was taken up by his friend and pupil Adam Smith,[5] who found the imposition justified on two basic premises,

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1 Among others are Francois Quesnay , Adam Smith, David Ricardo, James Mill , John Ramsay McCulloch, John Stuart Mill and Henry George.

2 Nicolaus Tideman, 'The Economics of Efficient Taxes on Land,' in Tideman, Nicolaus, (ed.), *Land and Taxation*, London: Shepheard-Walwyn (Publisher) Ltd.,1994, pp. 103-123.

3 Groaning over the terrible sufferings of the French people caused by the ruinous wars, Quesnay, regarded by Henry D. Macleod *(The Elements of Political Economy*, London: Longman, Brown, Green, Longmans and Roberts, 1857,) as 'the Copernicus of Political Economy' (p.5), founded the *physiocratie* which dedicated themselves to the principles of social relations of mankind and the art of government. Quesnay had in his lifetime served as consultant physician to King Louis XV.

4 Tideman, *op. cit.*, p.106.

5 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, (Notes by J.R. McCulloch), 3 Vols. (reprint 1812), London: Ward, Lock & Co. Ltd.

namely, the ability of the public to pay, and the justifiability of payment as a direct consequence of the public benefits of good government.[6] David Ricardo,[7] on the other hand, cautioned that it would be harmful to the economy at large even if the public merely started thinking of the perceived risk of tax on land, despite the action on it not being effected. James Mill[8] added another dimension to the debate with his proposal to allow for increment of rent on land by the state.[9] The debate was further shifted on to a different plane by J.R. McCulloch whose treatise on taxation called for the establishment of a right of private property in land.[10] To him, the culmination of such ownership 'is the grand source of civilization'[11] inspiring individuals to love of country and posterity.

McCulloch's contemporary, J.S. Mill,[12] apart from proposing the valuation of all land, suggested that increases in land rent be a consequence of the progress of society. In line with earlier economists, he also argued that rent as land rent should not be considered as a tax but as 'a reservation of a part of the rent of land for the state.'[13] Perhaps most interesting of all was Henry George's statement of the obvious that since no one created the land, the only right to any claims that the people have was 'the human improvements

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6 Tideman, *ibid.*, pp. 106-107.

7 Ricardo, David, *The Principles of Political Economy and Taxation*, New York: E.P. Dutton, 1911(first published 1817).

8 See Donald Winch, *James Mill: Selected Economic Writings*, (intro. and ed.), London: Oliver & Boyd,1966.

9 A colleague and disciple of Ricardo, Mill ('Elements of Political Economy', pp. 210-366 in Winch, *ibid.*, pp.358-359) was convinced that tax on land does not affect the cost of production. Mill took twelve years to write the *History of British India* and served the East India Company in India for seventeen years at the beginning of the nineteenth century. He was critical of the Indian revenue system particularly the prevalence of private landlordism, the *zamindars*, whom he regarded as 'interlopers with with no property or tenure rights' (*ibid.*, 'James Mill and India', p. 392) and regretted that by their recognition of the *zamindars*, 'the government had created private rent income out of what might legitimately and harmlessly have furnished the revenue of the state (*ibid.*, p.393).

10 See McCulloch, John R., *A Treatise on the Principles and Practical Influence of Taxation and Funding System*, New York: August M. Kelley, 1968 (reprint 2nd edition of 1852).

11 Tideman, *ibid.*, p. 114.

12 Son of James Mill. See Pedro Schwartz, *The New Political Economy of J.S. Mill*, Weidenfeld & Nicolson, 1968.

13 Tideman, *op. cit.*, p.118.

to the land.'[14] Proceeding from this premise and following Quesnay, George radically proposed the abolition of all taxes except for a tax on land values.[15] He contended that the measure would achieve two aims: it would make land more accessible to those who genuinely wanted to put it into productive use, and it would discourage pure speculation in land, for the venture would become unprofitable.[16]

Despite their different backgrounds and separation in time, these political economists were convergent on many aspects of their views whilst differing on others. It seems obvious that they are generally agreed on the principal fact that tax imposed on land should be less than the rental value of the land, and that all human improvements on land be excluded from the tax base of the assessment procedure. Particularly in common between Adam Smith, James Mills and Henry George is their desire for a system of taxation which would be fair and convenient to the people.[17] Henry George's statement of the obvious that land was not created by man had more than a thousand years earlier been preceeded by the Islamic legal principle that ownership of land is vested ultimately in God and that therefore the state, as representing the whole Muslim community, is only its temporal owner. Man's responsibility as God's vicegerent on earth is purely to make

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14 Henry George, *Progress and Poverty*, New York: Robert Schalkenbach Foundation, 1971, pp. 338-339. Propagating the idea of land as a common property, George attributed it to the lost meaning in America of the doctrine of eminent domain, 'existing as well in Mohamedan law, which makes the sovereign theoretically the only absolute owner of land, ... the recognition of the sovereign as the representative of the collective rights of the people...' (p. 379).

15 *Ibid.*, p. 406.

16 *Ibid.*, pp. 413-414.

17 Smith underlined his taxation premise with four maxims, that (i) it was every subject's obligation to contribute to support the government of the state according to his ability and proportionate to the revenue which he has enjoyed under the protection of the state, (ii) the tax payable ought to be certain, and not arbitrary, (iii) tax ought to be levied at the time, or in the manner, most convenient for the contributor to pay it, and (iv) tax ought to be so contrived as to take out and keep from the people's pockets as little as possible. (Smith, *op. cit.*, pp. 654-655). Similar maxims were echoed by Mill, who reminded the state to (i) take from the people the smallest quantity possible of their produce, and (ii) take from them with the smallest possible hurt or uneasiness. (Winch, *op. cit.*, p.412). In the same breath, George reminded it that (i) the tax ought to bear as lightly as possible upon production, (ii) that it be easily and cheaply collected, (iii) that it be definite and certain so as to avoid oppression of the taxpayers or abuse of the officials, and (iv) that it ought to bear equally on all citizens so as not to cause undue advantages or disadvantages to anybody. (George, H., *op. cit.*, p. 408).

the best use of land at his disposal for the general welfare of the community.

Earlier in the second half of the fourteenth century, Ibn Khaldūn (1332-1406), a North African Muslim, also spoke of taxes in both rural and urban economies. In the context of government levying taxes on its subjects, Ibn Khaldūn reminded rulers of the wisdom of imposing light state taxes. Beginning his writing with his admonition to rulers to heed God's injunctions, to seek His pleasure, and not to transgress His limits, Ibn Khaldūn pointed out the virtues of light taxes in that, whilst the total would still be considerable, in a rural economy based on agriculture, it would provide an incentive for the subjects to work hard, 'with property as the prize.'[18] Rosenthal regarded Ibn Khaldūn a political scientist, for despite his constant reference to the obligations of the *shari'ah*, in respect of *zakāt* (poor-tax), *kharāj* (land-tax) and *jizyah* (poll-tax), Ibn Khaldūn's proposition was not bound entirely to the *shari'a* alone. The Muslim scholar also addressed the wider subjects of taxes and aspects of good government.[19]

Land Rent As A Source of State Revenue.

Historically the introduction of land rent in the Straits Settlements and the Malay Peninsular, could probably be traced back to the early days of the Norman conquest of the British Isles, for upon the conquest, the Normans imposed some kind of land rent upon the conquered tenants so as to 'acquit'[20] them of military services. That was, in a sense, a pre-condition which would allow the local population to remain and continue working on their land. The 'quit' rent then came to be a symbol of subjugation of the conquered people to the Normans' overlordship. The relevance of this digression to the current Malaysian

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18 Rosenthal, Erwin I.J., *Political Thought in Medieval Islam: An Introductory Outline*, Cambridge: Cambridge at the University Press,1958, p. 91.

19 *Ibid.*, Chapter Three on 'Government' and Chapter Four on 'The Theory of the Power-State.'

20 Thus the term quit rent. For detailed discussion on the origins and meanings of ancient English land measurement terms, see Philip Hore, *An Explanation of Ancient Terms and Measures of Land With Some Account of Old Tenures*, London: Basil Montagu Pickering, 1874. See also D.R. Denman, *Origins of Ownership - A Brief History of Land Ownership and Tenure in England from Earlier Times to the Modern Era*, London: George Allen & Unwin Ltd., 1958, and as regards the adoption of the terms in the British colonies, see Beverly W. Bond, Jr., *The Quit-Rent System in the American Colonies*, New Haven: Yale University Press,1919.

context is meant only to explain the origin of the term 'quit rent.'

From the early period of the establishment of their colonial system of administration, the rationale for the British-inspired imposition of rent on land'[21] has undergone a number of changes. During the initial years of the Straits Settlements, it was normal for land to be alienated either subject to the payment of a fee simple, on irregularly imposed rents, or free of any such condition. As stated earlier, in the context of Penang and Singapore, the administration was more principally concerned simply to encourage settlers to the islands. Therefore, despite serving the purpose of generating income for the government, rents should not be seen as an obstacle to potential settlers. Rent-free lands covering thousands of acres was also offered to large-scale agriculturists and planters as incentives by the Perak and Selangor State Councils. To a large extent, rent as direct income to the states, was foregone for indirect benefits expected to accrue from subsequent land development. The best testimony to this was Swettenham's popular defence of Selangor's poor record of rent collection during his period as Resident in late 1880s and early 1890s, arguing that his administration was more concerned with 'encouraging population' than collecting revenues.[22] The same could also be said of the policy of Governor Bonham who, about forty years earlier, plainly justified the creation of 'improving proprietors', instead of seeking 'pecuniary returns', as the purpose of his government at Singapore parting with lands and imposing rents upon their alienations.[23]

In other words, during its inception, land rent was never seriously conceived as

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21 Sporadic instances of resistance in a number of Malay States from Naning in 1831 to Trengganu in 1928 testified to the presence, though isolated, of public oppositions. Opposition to the introduction of the 'quit rent' was also one of the underlying factors which brought the American colonies together to wage their War of Independence against the British in 1776. It was also a grievance which helped spark the Indian Mutiny of 1857. See Bond, *ibid.*, and Thomas R. Metcalf, *Land, Landlord and the British Raj*, Berkeley: University of California Press,1979.

22 See Judith E. Sihombing, 'Land Law in the Federated Malay States until 1928', in Ahmad Ibrahim and Judith E. Sihombing, (eds.), *The Centenary of the Torrens System in Malaysia*, Singapore: 1989.

23 Despite this the policy which favours mere speculators was abandoned soon afterwards. See James Lornie, 'Land Tenure', pp. 311-314, in Makepeace, Brooke and Braddell, (gen. ed.), *One Hundred Years of Singapore*, 2 Vols., London: 1921.

an essential source of public revenue. The fact that it also functioned as a traditional source of revenue for the government, as is evident in Tables 5.1a. and 5.1b., could fairly be viewed as incidental. The figures in Table 5.1a show that for the period 1863-1864 to 1865-1866, land revenue provided for only about 4.5% to 5.8% of the total income for the Revenue Department of the Straits Settlements. This is far too low as compared to tax

Table 5.1a. : Receipts of Revenue Department, Straits Settlements, 1863-1866.

	1863-1864 (Rs)	1864-1865 (Rs)	1865-1866 (Rs.)			
			Singapore	Penang	Malacca	Total
Land Revenue	64,770	76,569	44,300	20,300	16,915	81,515
Forest Revenue	2,288	1,770	660	1,600	792	3,052
Miscellaneous	60,253	64,013	53,856	3,000	6,538	63,394
Farms Revenue	1,314,961	1,331,840	847,176	298,000	122,179	1,267,355
Total	1,442,272	1,474,192	945,992	322,900	146,464	1,415,316

Source: *CO/273/8*: 'Estimated Receipts and Disbursements of the Revenue Department, Straits Settlements for the Year 1865-66.' Compiled and re-arranged by the researcher.

from farm revenues, which consistently contributed about 90% of the total. Nevertheless, revenue from land rent remains essential. As further highlighted in Table 5.1b, when comparison is confined to sources of land revenue only, land rent *per se* stands out as the

Table 5.1b. : Sources of Land Revenue, Straits Settlements, 1863 - 1866.

	1863-1864 (Rs)	1864-1865 (Rs)	1865-1866 (Rs)			
			Singapore	Penang	Malacca	Total
Land Rents	43,541	52,147	40,500	14,000	3,715	58,215
Transfer Fees	9,930	11,300	3,000	6,000	1,500	10,500
Fees on Cutting Paper	295	150	-----	100	-----	100
Tenths on Commuted Lands	6,312	7,000	-----	-----	6,000	6,000
Tenths on Uncommuted Lands	3,781	5,122	-----	-----	5,600	5,600
Survey Fees	911	850	800	200	100	1,100
Total	64,770	76,569	44,300	20,300	16,915	81,515

Source: *Ibid.*[24]

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24 In contrast to the continued collection of the tenths in Malacca, figures for these years also signalled the phasing out of the 'cutting papers' in Penang after ninety years.

major single contributor, accounting for about two-thirds of the total.[25] These breakdowns, however, do not include receipts from sources such as customs, stamps, law and justice, police, marine, public works, and others which, together with the Revenue Department as above, totalled Rs 2,184,642 for 1863-64, Rs 2,232,028 for 1864-65 and Rs 2,144,676 for 1865-66.

Notwithstanding the actual amounts, land rents have always been a definite source of revenue for the states. Statistics show that during the early part of British colonial administration, income from land rents in the Federated Malay States for the period from 1896 to 1936 averaged from as low as 0.5% to as high as 5.4% of the overall state revenue.[26] Together with incomes from revenue farms, tin and rubber industries and other sources, land rents have contributed their fair share to the overall development of the country. In fact, compared with other British colonies, the reliability of these sources of revenue in funding the entire administration had gained for the local government envious recognition from a number of its own former senior administrators.[27] Over time, however, with the onset of the market economy, the significance of revenue farms in particular began to slide, giving way in importance to the rapid development of rubber plantations

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25 See also Appendix 5.1.

26 See Appendix 5.2.

27 Initially, finances for the Straits Settlements originated from four main heads: the Local Government, the General Government of India, the Imperial Government and the Municipality. Statistics for the years 1863/64 to 1865/66 showed annual budget deficits. But, in the year of its transfer to the Colonial Department, despite it being expected to be left with only two sources of finance, namely, from the Local Government and the Municipality, the Straits Settlements budget was expected to end with a surplus. See *CO/273/8*: 'Enclosure No.2 in 2129/64: Abstracts of the Probable Annual Revenue and Expenditure of the Straits Settlements if Transferred to the Colonial Department.' For the individual testimonies of the 'sound finances of the Straits Settlements and British Malaya' as contained in their respective addresses at the annual gatherings of the Royal Colonial Institute, see Frederick A. Weld, 'The Straits Settlements and British Malaya'; E.W. Maxwell, 'The Malay Peninsular: Its Resources and Prospects'; Frank A. Swettenham, 'British Rule in Malaya'; and Hugh Clifford, 'British and Siamese Malaya,' all in *Proceedings of the RCI*, Vol. XV, 1883-84, pp. 265-311; Vol. XXIII, 1891-92, pp. 3-46; 1896, pp. 170-211; and Vol. XXXIV, 1902-03, pp. 45-75. See also the collections of these speeches and others including E.W. Birch's 'The Federated Malay States' in Paul H. Kratoska, (ed.), *Honourable Intentions*, Singapore: Oxford University Press, 1983. See also Appendices 5.3a - 5.3f of the present study.

and the tin industry.[28]

Land Rent and the State Finances.

The rationale for land rent as an essential condition of land alienation today, and its significance to the state's finances, deserves deeper scrutiny. In the present context, land rent is both a source of public revenue and a consequence of benefits enjoyed by the people. A proprietor's payment of rent could, therefore, be viewed as:

(a) signifying their recognition of the sovereignty of the State Authority, in which are principally vested all lands,

(b) contributing to the State a steady source of revenue from land, and

(c) repaying the State Authority for general services which the State provides, in particular, as safe custodian of land titles and maintainer of records and transactions.

So despite the mandatory provision under the law, the liability of land proprietors to rent is simply the fulfilling of their obligations to the State Authority for the facilities and services from which they have benefited. As such, a proprietor's failure to pay rent would be not merely a failure of his ability to contibute to public revenue, but a serious breach of his contractual relationship with the State in respect of the land owned.

Given the strong centralising tendency of the Federal Government, and left with very limited sources of revenue, the states under the present constitutional arrangements, can ill afford not to continue relying on revenue from land rents. But, in contrast to their earlier prominence, collections from land rents totalled and averaged for the period 1987-1994[29] accounted for as little as 1.4% of the total of revenues, in the case of Trengganu, to as much as 26.1%, in the case of Penang. Despite its relatively meagre percentage contribution to total revenue, and in the absence of alternative arrangements, land rent

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28 A number of writers suggest that the decline was a result of deliberate colonial stategy. See John G. Butcher and Dick Howard, (eds.), *The Rise and Fall of Revenue Farmings: Business Elites and the Emergence of the Modern State in Southeast Asia*, London: MacMillan Press,1993.

29 See Appendix 5.4.

remains a jealously guarded source of state revenues.[30] Apart from easing financial burdens, the rent also has a direct bearing upon the future of a state's political autonomy.

Table 5.2. : Abstracts of the Total Revenue and Expenditure of the States in Peninsular Malaysia, 1987-1994.

	to the nearest RM millions							
	1987	1988	1989	1990	1991	1992	1993	1994
A. TAX REVENUE								
1. Direct Tax								
a. Land Rent (recurring)	245	252	269	294	316	322	329	325
b. Other Sources	90	102	94	90	78	93	112	113
2. Indirect Tax	22	40	46	59	57	59	47	48
Total of A	357	394	409	443	451	474	488	486
B. NON TAX REVENUE								
1. Royalties	332	330	361	453	501	523	562	497
2. Other Sources	509	547	647	1,378	1,088	1,104	1,069	1,044
Total of B	841	877	1,008	1,831	1,589	1,627	1,631	1,541
C. NON REVENUE RECEIPTS	739	711	821	1,058	1,110	471	432	370
Total of A+B+C	1,937	1,982	2,238	3,332	3,150	2,572	2,551	2,397
CAPITATION GRANTS	77	69	69	69	71	75	117	119
EXPENDITURE								
A. MANAGEMENT								
1. Emoluments	482	479	488	512	538	608	621	679
2. Other Sources	1,113	1,205	1,441	2,027	2,249	2,072	1,862	1,893
Total of A	1,595	1,684	1,929	2,539	2,787	2,680	2,483	2,572
B. DEVELOPMENT	569	510	627	1,149	1,206	1,022	1,193	1,105
Total of A+B	2,164	2,193	2,556	3,688	3,993	3,702	3,676	3,677

Source: Tax Division, the Ministry of Finance, Malaysia, August 1994. Note: Data compiled and re-arranged by the researcher.

As amplified in Table 5.2, currently states obtain their revenues from many other

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30 Gayl D. Ness, *Bureaucracy and Rural Development in Malaysia - A Study of Complex Organizations in Stimulating Economic Development in New States*, Los Angeles: University of California Press, 1967, p. 179.

sources differentiated under three main headings: tax revenue, non-tax revenue and, non-revenue receipts. In addition, State Governments also receive annual capitation grants from the Federal Government. In respect of revenue from land, however, which is included as an item of direct tax under the tax revenue heading, receipts from collections of land rent still stand at two-thirds of states' total land revenue. By virtue of this huge proportion, land rent effectively holds a central position in any formula affecting state revenues from land (see Item 1.a. in terms of the overall Total of A under Tax Revenue above).

No amount of improvements in land premiums, office fees and other payments under the *State Land Rules*, could have considerable impact on land revenues as a whole if a corresponding change is not contemplated on land rents. Viewed from another angle, inefficient rent collection which, in turn has caused recurring arrears, has also resulted in land rent's 'negative' contribution to state's finances, for it plunges the state into worsening debt. The fact that land rent, however, continues to form a small proportion of total states' revenues is a cause for concern, for state expenditures over the years tend to be generally far greater than their capacity to generate incomes. This has resulted in states experiencing consistently higher deficits. To fund rapid development and to service their massive debts (see the following Table 5.3), states would either have to look for new

Table 5.3. : Summary of States' Debts and Related Arrears, Peninsular Malaysia, 1983-1991.

Source / Year	Debts and Arrears to the nearest RM millions								
	1983	1984	1985	1986	1987	1988	1989	1990	1991
Total Debt	3,896	4,018	5,115	5,561	4,945	5,131	5,440	6,147	4,320
Land Revenue Arrears	116	98	148	218	229	110	383	381	273
Land Rent Arrears	74	54	68	128	107	50	133	314	157

Source: Compiled from the yearly *Auditor-General's Report*, 1983-1991, for the respective states. *Report* for 1992 was also ready and made available to the researcher in August, 1994 but its data extractions was embargoed until the *Report* have been tabled in and passed by the Parliament later.

resources or radically reform existing ones. To expect significant increases in federal funds would appear unrealistic. Even the federally-allocated capitation grant proves too little to

have any significant effect in off-setting states' finances. In fact, the amount of capitation grant, which forms a proportion of between 1.4% to 8.9% of the respective states' revenues, is smaller than the already low percentange of revenue from land rent.[31] Whilst revenue remains low, annual debt keeps accumulating and rising.

Table 5.4. : Summary of States' Accumulated Debts, Peninsular Malaysia, 1983-1991.

	Total Debts to the nearest RM millions								
	1983	1984	1985	1986	1987	1988	1989	1990	1991
Johore	602	671	840	893	956	1,022	998	964	930
Kelantan	497	568	647	688	736	754	760	741	738
Pahang	272	294	388	438	456	469	512	576	n.a.
Kedah	406	444	519	570	n.a.	n.a.	n.a.	724	762
Malacca	152	193	226	232	228	232	242	243	282
N. Sembilan	271	314	364	382	403	426	444	470	522
Perak	399	n.a.	563	608	597	640	647	627	540
Perlis	95	101	n.a.	113	121	129	132	125	n.a.
Penang	326	352	327	312	n.a.	n.a.	273	255	n.a.
Terengganu	448	489	498	558	611	588	564	540	528
Selangor	428	592	743	767	837	871	868	882	n.a.
Total	3,896	4,018	5,115	5,561	4,945	5,131	5,440	6,147	4,302

Source: *Ibid.* Selected and compiled by the researcher.

For the states to resort to other sources of financing, be it from within or outside the federation, would necessarily involve two things. First, is the need for 'federal approval', and secondly, if approved, the entailment of more debts. Given the prevailing situation of recurring collection arrears, it would appear extremely unlikely that land rents, like other sources of states' revenues, will significantly increase in the near future. This will create a vicious circle of State Governments being unable to self-finance beyond their own means, thus having to look for assistance to the Federal Government which, in many instances, results in State Governments losing 'political autonomy' *vis-a-vis* Federal

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31 *Ibid.* Compare the data between the revenues from land rents and from capitation grants in Table 5.2.

Government.[32] Figures in Table 5.4 give the impression that given the rate of debt increase, coupled with recurring shortfalls in rent collections and rising arrears, it would be hypothetically impossible for states to substantially reduce their debts. Even if land rent were collected in full, it would still not be enough to cover expenditure, let alone to service debt.

Land Revenue Administration Alternatives.

The justification for and legitimacy of State Authority levying rent on land is not a subject of dispute. What is at issue is the fact that the uncertain and small percentage of revenue from land rent is leading the states to view their future with uncertainty. In fact, the prevailing situation of land rent gives the impression of a source of revenue in limbo, neither considerable nor dispensable, and neither assured nor insecure. Politically, the states are desperately clinging on to revenue from land rent, for it reminds them of the authority and constitutional jurisdiction they have over land matters. But such a constitutional right would only be meaningful if the financial returns were commensurate with the amount of expenditure the states have to bear. In other words, the states' financial viability would, to a large extent, reflect their political viabilty as entities within the federation. Given the current woeful financial constraints, how could revenues from land rents be transformed into a more viable source of revenue within the same constitutional framework?[33]

Despite the constitutional and administrative constraints, the State Authorities have to make the best of their land rent revenues. To ensure more revenue from land rent, the State Authorities could embark upon either of two possible courses of action. The first

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32 See for examples, Dorothy Guyot, 'The Politics of Land: Comparative Development in Two States of Malaysia', *Pacific Affairs*, Vol. XLIV, No.3, Fall, 1971; Audrey R.Kahin, 'Crisis on the Periphery: the Rift Between Kuala Lumpur and Sabah,' *Pacific Affairs*, Vol. 65, No. 1, Spring, 1992, pp. 30-49; and Shafrudin, B.H., 'An Episode of Centre-State Relations in Peninsular Malaysia: the Endau-Rompin Case,' *The Journal of Commonwealth and Comparative Politics*, Vol. 23, No. 2, July, 1985, pp. 140-156.

33 Ness, *ibid.*, who observed that the amount of revenue from land is significant, yet it does not form a large portion of the states' total income.

would be to work within the confines of the existing administrative structure and legal provisions of the *Code*. The other would be to resort to an alternative formula outside the structure, but one which would affect existing Federal-State constitutional arrangements. The main concern of the following discussion is either to increase land rent revenue by utilizing the provisions of the existing *Code* or to obtain similar results by resorting to legal reforms.

(1) Alternative Options Within the Administrative Structure.

(a) Enforcement of Rent Collection.

The first option, focussed on ensuring improved rent collection performance, calls for serious examination by the State Authorities of the efficacy[34] of their land administration machinery and for closer scrutiny of their rent collections. Despite the recognition over the years of the fact that land offices lack manpower and better trained staff[35] and need improved support services,[36] this option will require the State Authorities to set clear targets and give proper directives in respect of rent collections and arrears recovery. Land offices for their part will have to provide basic services to the people, including organizing more concerted efforts at reaching out to potential rent payers. Land officers must also be prepared to complement these efforts with a readiness to enforce the provisions of the law.

Interviews carried out in June to August 1994 revealed that land officials at all

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34 Ness, *ibid.*, p. 138, alleged that state governments generally neither have the quantity nor quality staff required 'to move ahead rapidly.'

35 In 1984, the gravity of the situation prompted the Chairman of the National Land Council to issue his statement of concern over matters of establishment, emplacement and training of land officials which needed urgent attention. Immediately after, a task force was set up comprising of officials from the Public Services Department and the Ministry of Lands. State Directors of Land and Mines of Peninsular Malaysia 67th Conference, Paper No. 10/67/1986, 'Laporan Kajian Mengenai Masalah Perjawatan, Penempatan dan Latihan di Peringkat Pentadbiran Tanah Daerah.'

36 See States Director of Lands and Mines, Peninsular Malaysia Conference, Paper No. 1/1993 February 2-3, 1993, (Unpublished), and.interviews - Haji Baderi, Hashimah, Normah, Zaiton and Razali in Chapter Four of this study.

levels seem resigned to the fact that economically field collection is not a worthwhile effort to undertake to secure rent payment. This perception is also shared by a number of State Directors. Their arguments, however, differed. Most junior officials cited the lack of personnel as an obstacle that prevented their offices from carrying out field collections. Even without having to carry out field collections, they already claim to be overstretched. To senior land officials though, the discouraging factor for field collection is the 'token' rent returns. Viewed as a whole, these officials may have a valid point, in that, given the manpower constraints and overlapping priorities, they have to resort to the convenience of not at all carrying out field collection.

Field collection had always been the conventional practice. During the British colonial days, officials went on expeditions partly to examine and undertake rent collection.[37] The practice of state officials and tax agents visiting villages, distant districts and outlying settlements was universal. Datuk Andika Indera recounted that even in the 1940s, because of the rarity of metalled roads, he had had to spend about two days trekking by foot and bicycle through dense jungle and along the coastline of Trengganu to reach a destination. During the journey his team had to spend nights under trees 'in the company of mosquitoes' bringing along with them their own supplies of 'rice and dried fish' and always harbouring the fear of having to encounter the 'potential threats of communists wanting to disarm them'.[38] Today land officials are provided with state-owned Pajeros and Troopers, and in cases like the district of Taiping, even speed-boats to reach distant islets.

Lest one be under the impression that field collection is such a taxing exercise to be undertaken by the land office, it has to be clarified that in most instances they are carried out only during specific periods of the year. Officials interviewed admitted that based on their own experience, field collections were carried out between January and

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37 *CO/273/174*: 'Despatch No. 294 (15/7/1891): Administration of Country District by J.F. Dickson - Diary and Notes of Visits of Inspection to the District Offices in Malacca, the Dindings, Province Wellesley and Penang in May and June, 1891.' Apart from Dickson's own report on his visits, it also contained report on the progress of filed collections of 'District Officers on circuit.'

38 Interview - 3 August, 1994.

May (January and June in the case of Kelantan) and only one visit each was organized to villages situated in outlying areas. Despite the meagre rent returns, the State Authority must insist on land offices continuing with field collections, for the exercise presents land administrations with other opportunities apart from collections. Field collection trips present officials with the opportunity of disseminating information to the public whilst at the same time gathering feedback from them, of updating records, and not least, of bridging the gap through a public relations exercise. Regardless of the ease of accessibility between people and office, field collections should be carried out as a manifestation of a land office service to the people for which, at least, collection of rent and recovery of arrears would be justified.

In dealing with rent payers and potential defaulters, Land Administrators ought perhaps to adopt Paul Rock's advice of a simple three-principle approach,[39] which is, (i) to get the payment, (ii) to get it promptly, and (iii) to retain the client's goodwill while collecting from him, and in the process, to try to grab the opportunity to turn the collecting effort into a manifestation of the office's concern for the public. These principles summed up the fact that Land Administrators should ensure that the State obtains what it is due, that collection should be planned and executed on schedule and not be allowed to slip into arrears, that arrangements be made and efforts be exerted to facilitate payments from the public with minimum of discomfort, if any, and that occasions such as field collections be transformed into succesful massive public relations gatherings.

To further facilitate payment of rents, more incentives and flexible arrangements such as payment in advance or in instalments should be widely explored so as to enable landowners as clients to be given the opportunity to fulfil their obligations in the most conducive manner of their choice. The experiment carried out by many states in 1987 to waive all late payment penalties if all outstanding rents, including previous arrears, were paid by land proprietors before the end of December of the said year, proved quite succesful. This form of incentive too should be reconsidered for repetition but reward

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39 Paul Rock, 'The Bureaucratic Collection of Small Consumer Debts,' in Peter Hollowell, (ed.), *Property and Social Relations*, London: Heinemann, 1982, p. 149.

should also be reserved for prompt and early fatihful rent payers, not the defaulters.[40] Since rent is revisable every ten years, administrative mechanisms should be found to ensure that advance payment of rents for any number of years would be acceptable for as long as it does not surpass the next revision date. In like manner, the facilities for payment by instalments should also be accomodated. Apart from the necessary amendments to the respective *State Land Rules*, computer systems software have to be re-designed to enable the accomodation of such needs.[41]

(b) Enforcement of Demand and Forfeiture.

In parallel to their outreaching efforts, land officials have to be seen to carry out their duties and exercise their powers under the law. In dealing with persistent defaulters, they should not hesitate to opt for strict application of the legal provisions, particularly those under the *Code*. For a start, both as punishment to defaulters and as a deterrent to others, all recovery actions,[42] especially those instituted under sections 97 and 98 of the

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40 The main criticism against the 1987 experiment was that it benefitted the defaulters and late payers whose penalty were waived, whereas the law-obedient and non-defaulting rent payers did not receive anything in return.

41 In the early 1930s payment of rents by instalments was allowed under the law and this was afterwards adopted by the Straits Settlements. *CO/273/611/20*: Enclosure No. 3 to Straits Despatch 424 of 11 December, 1935: 'Report on an Ordinance to Amend Ordinance No. 35 (Land Revenue Collection) (No. 47 of 1935);' *J/PTJB 2 (CLR 355/334), 1934*: 'Payment of Rent by Instalment in 1935.' In their deliberations in April 1992, the State Directors were reported to have discussed and rejected the proposal for advance payment of quit rent and the introduction of a rebate incentive for those proprietors who paid their rents early. The reason offered for rejection was 'the inconvenience it would cause the land offices in terms of time and manpower constraints, as well as the difficulty the proposal might cause on the preparation of budget estimates.' State Directors of Lands and Mines Special Meeting No. 1/1992, Paper No. [?]: 'Garis Panduan Semakan Cukai Tanah Milik Bagi Kali Ketiga di Bawah Seksyen 101 Kanun Tanah Negara.' But the fact that in their meeting on 5-6 July the following year the State Directors decided to introduce further provisions in the *State Land Rules* to accomodate for the different modes of rent payment - deferment, rebate and instalments - prove that the issues have still not been fully addressed. State Directors of Lands of Malaysia Meeting 1/93, *op. cit.* The State Authorities should delegate to Land Administrators the discretionary power to authorise payment of rents in advance or in instalments as is the authorisation to the Director-General of Inland Revenue for income tax collection under Section 103 (3) of the *Income Tax Act, 1967* (*Act 53*).

42 This does not mean that all defaulting land owners need to be served with 6As. Land Administrators are still expected to reasonably exercise their discretionary powers to decide the criteria and priority of defaulters on whom 6As are to be served. But this has to be carried out based on a definite plan of action which has to be followed through.

Code, should result only in either the outstanding rent due to the State Authorities being paid, or the affected land ending in forfeiture.[43] In plain words, this means the strict enforcement of the Form 6A Demand Notice as an irretractable course of action, a return to the original purpose of the provision.

To achieve this, Land Administrators should not be left with too wide a room to exercise their discretionary powers. Neither should they be left to grapple with mental uncertainties or engage in futile proceedings as regard the notices.[44] Interviews have shown two particularly disturbing aspects pertaining to 6A and 8A exercises. Firstly, a sad truth is that Land Administrators are generally reluctant to commence rent recovery proceedings especially when forfeiture of land is foreseen. In some instances, arrears seem ignored whilst in others, the exercises did not advance beyond the sending of reminder letters or were prematurely terminated.[45] Secondly, quite prevalent among certain sectors of the public[46] is the seemingly confident belief that, despite the issuance in some cases of 6A notices and subsequently the gazetting of 8As,[47] Land Administrators or the State Authority will not proceed with forfeiture actions. Evidence shows that with the exception

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43 Whilst limited discretion may cause a official to appear mechanical, unlimited discretion is liable to abuse. Haji Baderi's assertion of 'collective discretion' is quite sensible, but may not be practical in all circumstances. For once, the statement of Mr. Justice Thorne (in *Tham Hing Kwai v The State of Negri Sembilan and Others, 1931),* that the task before the Court only concerns the interpretation of law and it was up to the Legislature to decide otherwise, is wise indeed. If the State Authority had so decided to confer wide powers on Land Administrators, then it is only sensible that they be allowed to exercise their judgments without much interference.

44 The consequences of these are unnecessary manpower, costs and time wastages which could otherwise have been avoided and put to better use. The case in point is the issue of reminder letters, which is neither provided for under the law, nor results in economically worthwhile returns. See relevant cases and testimonies by Haji Munawir, Haji Radzi, Dr. Nik Zain, Haji Khalid, Zakaria, Normah and Zaiton in Chapter Four.

45 These can mainly be attributed to (a) Land Administrator's lack of knowledge of legal procedures and details, (b) Land Administrator's over-burdening or pre-occupation with other assignments and (c) Outside interference in Land Administrator's actions. On occasions when they are further served with contradictory 'signals from above', be it from their administrative superiors or 'political masters,' Land Administrators might totally lose self-confidence or abandon any sense of initiave.

46 In some cases, partly due the realisation of their inability to effect meaningful physical forfeiture of land, even circles from among land officials are cynical about the end purpose of commencing 6As.

47 Take as examples the gazetted forfeiture cases of a quarry in Perlis, a Federal Department-occupied vs. State Agency-owned land in Johore and the *Oriental Bank Bhd. & Anor vs Pentadbir Tanah Hulu Kelantan* as cited in Chapter Three and Chapter Four of this study.

of a few, most cases ended as anticipated above and lend further credibility to the popular belief.

The State Authority has, therefore, to decide what it really expects of land rent and of Land Administrators. If revenue from land rent is crucial to state's finances, as actually is the case, priority should be given to the efficiency of its collection and recovery of arrears, and Land Administrators should be left alone to exercise their legal jurisdiction and administrative discretion. Unless legally required and provided for,[48] unnecessary reference to or interference by senior members of the state hierarchy, only exacerbate confusion in the minds of serious Land Administrators. Despite the absence of clear oral or written directives by the State Authority requiring Land Administrators to first refer to it the list of prospective or pending defaulters, prior to commencing or proceeding with 6A and 8A actions, feedback from land officials, confessed 'forced' retractions and withdrawals of forfeiture proceedings, degazetting of forfeiture and re-alienating of forfeited land to defaulting former proprietors, seem to imply the existence of such higher authority directives.[49] The Deputy Prime Minister's reminder to State Directors, that 'every effort at law enforcement needs to be supported by the State Authority', though sounding rather general, made the existence of such procedural prerequisites more likely. Similarly, the Director-General's proposal that Land Administrators 'periodically suggest to the State Authority alienated lands which ought to be forfeited for failure of proprietors to settle arrears' raises the question of motive. It compels one to ask why or what was the urgency or the underlying motive for such a suggestion, for it leaves the impression of administrators resigning the fate of their curtailed jurisdiction to politicians.[50]

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48 Since there is no provision under the *Code* requiring a Land Administrator to seek any formal official clearance from any other party, including that of the State Authority, he is principally individually responsible for the course of action to be taken.

49 Despite the fact that some of these actions are wrongful in law.

50 Given the fact that arrears keep on rising, it is puzzling to note that the State Directors of Lands and Mines appear to be contradicting themselves. In July 1993, they reaffirmed their commitment to formally obtain the 'blanket approval' of their respective State Authorities prior to taking further action against rent defaulters. But about four months later, by way of the computerised land rent collection system, they resolved to achieve a rent collection target of 100% and 'zero arrears'. Experience shows that the two conditions, however, are mutually exclusive. State Directors of Landsof Malaysia Meeting 1/93, Paper No. 9/1/93 (vol. 1), 'Kutipan Cukai Tanah,' and Meeting 2/93, Paper No. 7/2/93, 'Isu-isu Mengenai Sistem Pentadbiran Hasil Tanah Berkomputer Pejabat-

Perhaps negligible returns from past recovery efforts, such as experienced by District B Johore in 1993, might have discouraged land offices from taking recourse to the issuance of 6As on rent defaulters. Also sensible is the Kuala Lumpur land office's wisdom in giving priority to its in-house correction first, before faulting others. Despite this, however, there is no justification, say, for a major land office like Kuala Lumpur to appear helpless and remain inactive in the face of bodies corporate defaulting in thousands of *ringgits* each for so many years.[51] Equally important is the fact that the legal procedure and technicalities involved in the commencement of a rent recovery process is too cumbersome. It is estimated that assuming 'zero interference' in the entire recovery process and assuming also that every legal detail in the exercise is fully complied with, the minimum period it will take a Land Administrator to succesfully effect the forfeiture of a piece of land under the *Code* is 42 weeks or ten and a half months involving thirteen mandatory legal steps whereas, in a neighbouring country,[52] it will only take within a month to do so. Further delays and more complications would arise if Land Administrators choose to exhaust themselves with unlimited discretions or to embark upon other unnecessary administrative recourse which will inevitably involved at least three additional steps (refer to Flow Chart of the Rent Recovery Process in the next page). Wrong timing of the commencement of a recovery action may further worsen the process especially if it overlaps into the next calendar year, as was in the *Koperasi Sri Rembau Bhd. & Ors. v. Pentadbir Tanah Rembau* case.[53] As far as legal collection procedure is concerned, provisions under the *Income Tax Act, 1967 (Act 53)* compared more favourably than those under the *Code* in terms of the flexibility of its recovery options and

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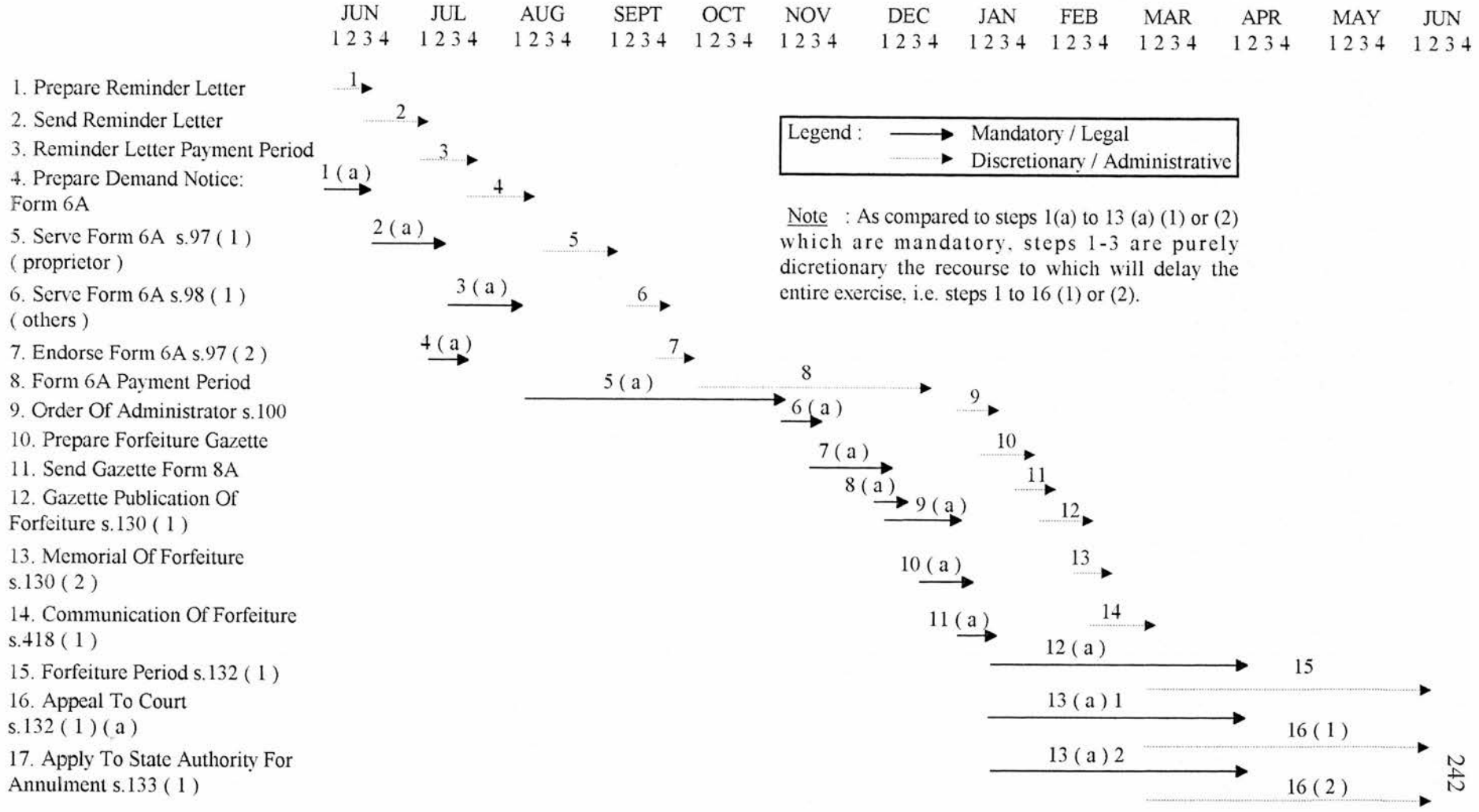
pejabat Tanah Semenanjung.'

51 Research in July-August 1994 suggests that for no credible explanation no corrective measures had been or were being contemplated by the Kuala Lumpur land office even against those who had defaulted for more that ten years, involving arrears of hundreds of thousands of ringgits. For the rent of only one title each, six bodies corporate owed about RM1.3 million to the Kuala Lumpur State Authority. See Appendix 5.5. for details of these major defaulters and a sample of different categories of defaulters in Johore and Kelantan.

52 *Butterworth Handbook of Singapore Land Law*, Singapore: Butterworth, 1986. Under Section 4 (1) of the Land Revenue Collection Act 1970, rent is due for collection from 1 January to 31 March. With effect from 1 April, unpaid rent falls in arrears and defaulters are given only fifteen days to pay.

53 The case is cited in Chapter Three of the present study.

Chart 3: Stages Of Land Rent Recovery Process Under The National Land Code, 1965



procedural details.[54]

Under the *Code*, Land Administrators are left without much scope for manouvre, for it has been clearly determined that cases of rent default should either end with payment or with the defaulter's land being forfeited. There is neither other flexibility nor 'bargaining power' on the part of Land Administrators to 'inflict' desperation on the proprietors and force them to pay.[55] But given the prevalent tendency among many land officials to either not commence recovery action leading to forfeiture, to abandon them midway, or to simply proceed with them indefinitely, the likely final analysis would be a 'continuous loss for the State Authority, neither gaining the rent payment nor the supposedly forfeited land. And, as testified by various levels of land officials interviewed, even in cases where lands were forfeited, they proved to be ineffective, for they remained illegally occupied by the defiant previous proprietor-occupants. As also observed by Beaglehole, eviction of unlawful inhabitants is not a practical possibility.[56]

It is in respect of this dilemma that new options are needed to bring sense to the entire recovery exercise. The change from attachment of property and auction of land to forfeiture of land as penalty for rent default was largely attributed to Blacker who, in his 'Notes' of the revision explained that,

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54 Apart from speedier process, the chances of tax evasion is effectively narrowed under the said *Act*. Under Section 103 (4), a tax payer is given only thirty days to pay, failing which a 10% penalty is automatically imposed on the outstanding amount without any need for notice. If the increased amount remain unpaid for 60 days, another 5% penalty is automatically imposed. From then on, if the tax remained in default, the Police, the Immigration and the Custom Authorities are alerted under sections 104(1) and 105(1) to prevent the defaulter from leaving the country or obtaining clearance at the ports. As far as recovery is concerned, the tax due are deductible from the defaulter' pension, annuity or periodical payments (section 105[1]), from his contract payments (section 107A) or dividends (section 108). Compare the length of this process with the 'mandatory' 42 weeks under the *Code*, and the varied options for recovery of tax as compared to 'forfeiture-of-land' only alternative under the *Code*. Almost similar provisions with the *Income Tax Act* are to be found in the *Real Property Gains Tax Act, 1976 (Act 169)*. In addition, both Acts provided for free postage (thus saving cost) and for more flexible execution of notices (such as, the non-receipt of a notice of service or its register on a tax payer does not invalidate such notice).

55 The only 'penalty' is that any land for which rent is due is deprived of any form of dealings.

56 Beaglehole, J.H., *The District: A Study in Decentralization in West Malaysia*, London: Oxford University Press, 1976, p. 300.

'Under previous land laws rent was defined as being a "first charge on land" and Govenment was therefore in the position of a first chargee and its remedy in the event of non-payment of rent was sale. Such sale was analogous with a chargee's sale and Government retained only the amount of the actual arrears plus the expenses of the sale. There is little justification for this earlier system. Payment of rent on alienated land is a condition entered on the document of title like any other express condition and there is no reason why non-payment of rent should not be treated as analogous with any other breach of condition. It is upon this principle that the provisions of this Code with regard to rent have now been framed and non-payment is regarded as a breach which, if not repaired, makes the [land] liable to forfeiture...'[57]

Despite its possible past shortcomings, the above rent recovery action which entails the attachments of personal property or the auction for sale of land of a defiant defaulter, coupled with new dimensions such as the introduction of a scale of penalties for defaults[58] (as in the *Income Tax Act*), imprisonment of defaulters, and other like alternatives need to be seriously and urgently reviewed and considered. To continue holding to a *Code* with powerful but impractical and ineffective rent recovery tool would be a mockery.[59]

(c) Review of Rent Revision Provisions.

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57 Blacker's 'Notes Upon the National Land Code By the Comissioner of Land Legislation - Land Code (Cap. 138),' n.d., p. 37.

58 In his discussion of effective mechanisms against tax evasion, Christopher Hood, 'Privatising U.K. Tax Law Enforcement,' pp. 319-334, *Public Administration*, Vol. 64, Autumn 1986, holds the view that an ideal 'punishment schedule' would be between one in which the probability of detection of evasion is zero (indicating almost total compliance with the law) and the certainty of punishment if caught and convicted (indicating efficient enforcement of the law against the evaders)(p. 324).

59 Alluding to the cumbersome legal procedure under the Code, Datuk Abdul Manaf Mohd Noor, the former Director General of Lands and Mines emphasised that all stages of land office work demands meticulousness and attention to details, for they involve law of administrative procedures. *ANM/SL 65*: Datuk Haji Abdul Manaf Mohd Noor, 6/12/1978. C.H. Sissons, *The A Spirit of British Administration and Some European Comparisons*, London: Faber and faber Ltd., 1959, defines Law of Administrative Procedure as 'the law prescribing the steps which have to be taken before a matter can properly come before the Court,' p. 68. This is further amplified by S.A. de Smith, *Constitutional and Administrative Law*, Suffolk: Penguin Books, 1977, when he pointed out that 'special difficulties arise where the question in not whether a public authority has acted ultra vires in a matter of substance but whether it has acted *ultra vires* in matter of procedure or form,' p. 551 (underlinings in the original). Acknowledging the necessity to conform to legal and procedural requirements, the question will remain that if other country and Department can adhere to all the said requirement yet get things done in more than double quick time and effectiveness, why should provisions under the *Code* not be reviewed?

Section 101 of the *Code* empowers the State Authority to revise rents.[60] This may be done with the approval of the National Land Council. Even though it has final jurisdiction over the proposed revised rates, the State Authority is bound by the *Code* in two important aspects of the revision exercsise. These are the stipulation that not less than ten years should lapse between the last date of revision and the date of coming into force of the proposed new revision,[61] and that in exercising its power the State Authority 'shall take no account of increases in land values attributable to improvements'[62] despite the fact that section 101(3) of the *Code* also empowers it to increase or to reduce the existing rate of rents or to introduce new ones.

As far as the time-frame is concerned, the ten year lapse between one rent revision and the next is an improvement from the previous periods of thirty years, when the first unified land law, the *Cap. 138*, was introduced in 1928, later amended to fifteen. But whether or not the current ten-year revision interval is viable, needs to be reviewed. Firstly, states have to make the best use of land, as one of their most important sources of revenue. To a large extent, land matters being under state's jurisdiction can only be meaningful if it does bring considerable monetary benefit. It has been evident that while debts keep on accumulating as a consequence of rapid development and growing administrative expenditure, receipts from a low rate of land rents coupled with uncollected arrears will provide states with a practically stagnant source of revenue. In the present situation, if there is anything that needs to be done about the rates, it can only be done in the year 2004, this being ten years after the coming into force of the last revision undertaken in 1994. In other words, there is practically nothing the states can do to increase their revenue from land rent between now and the year 2004.

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60 It has to be noted that this provision only affects land alienated under the *Code*. Land disposed under the *Land (Group Settlement Areas) Act, 13/1960* is not affected.

61 In different States and during different periods prior to the *Code*, the intervals stipulated for periodic rent revision varied from fifteen to thirty years. C.K. Meek, *op. cit.*, p. 53.

62 Section 101 (4) of the *Code*.

In contrast to the fast changing prices in property markets, time-value of money and overall improvement of social amenities and quality of life, the ten-year clause effectively puts a stranglehold on the state's financial capacity. By the time a new revision is effected, the revised rate, which is supposedly to increase fairly the amount of revenue for the state would, in the final analysis, again prove disproportionate to the currently changed value of money and the state's overall expenditure. In short, an increase in amount does not necessarily result in surplus receipts. RM200.00 in 1994 would not hold the same value and purchasing power as RM200.00 in 1984 or in 2004. Perhaps in terms of its practical value the equivalence of a RM200.00 in 1994 could have been only RM50.00 in 1984 but, would be likely to be RM400.00 or more in 2004.[63]

In revising rent rates, State Authorities have usually to adhere to a set of principles outlined by the National Land Council. Among the bases to be considered for rent revision are that:[64]

(a) it is a means of increasing revenue for the State Government and of defraying the administrative and operational costs of its land management;

(b) the rate fixed will boost economic development;

(c) the rates to be imposed should be commensurate with the purchasing power of the day;

(d) the revision should, as far as possible, not burden smallholders and low income groups;

(e) to avoid resentment, the revision should, as far as possible, not exceed 100% of the current rent, and a reasonable basis must be established for any increases exceeding 100%.

Despite the right to increase, reduce, or retain rates, it is clearly against the

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63 In their deliberations prior to the second revision of rents under the *Code* in 1983, the State Directors of Lands and Mines took note that due to the change in monetary value, a RM1.00 in 1971 was only worth RM0.51 ten years later. State Directors of Lands and Mines of Peninsular Malaysia Special Meeting on 29 September, 1983.

64 State Directors Conference Paper No. 2/2/1992: 'Garispanduan Semakan Cukai Tanah Milik Bagi Kali Ketiga Di Bawah Seksyen 101 Kanun Tanah Negara', 28-30 April, 1992, Appendix 'A', paragraphs A1 (1.1 - 1.6). Para 1.6 merely carried a reminder that all measurements be in metrics.

guidelines for a State Authority to impose a revised rate which would exceed by more than 100% the immediate preceding rate.[65] This is basically to ensure fair and reasonable enhancement of the rents. Compared to the fast-changing values of property and improvement of services, in reality even an increase of more than 100% effected once in every ten years is not commensurate with current prices. An increase to RM45.00 in 1994 of annual rent of one hectare of agricultural land previously charged in 1984 at RM15.00 per hectare would superficially indicate an increase of 200%. Viewed from the percentage point, the increase is indeed alarming. But viewed in real monetary terms, and parallel to the set basis of revision, the amount of revenue increase for the State Authority would not show a corresponding strength in the purchasing power of money for the same piece of land, for the one hectare of agricultural land which in 1984 would have been priced at about RM12,000.00 would, by 1994, be sold for RM50,000.00. So, whereas the 1984 rent accounted for only 0.125% of the sale value of the land, despite the 200% increase of the revised rent, in 1994 the rent : sale-value proportion would have decreased to 0.09%.[66] Conversely, if rent were to be charged based on percentage, the state would automatically benefit from enhancement of land value. Hypothetically, if rent for one

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65 Under the previous law, the State Authority is not supposed to impose a rate exceeding 25% of the prevailing rate in the case of Kelantan, and not more than 50% in the case of Kedah, and that improvements on land should not be taken unto account. *CO/273/551/8*: 'Draft 25/10/1938: Colonial Office.' See also C.K. Meek, *op. cit.*, p. 46.

66 As an illustration, in a separate incident in a district in Negri Sembilan, the researcher was informed that a Land Administrator had once imposed a revised 300% fee increase on a piece of State land held by an individual on a Temporary Occupation Licence (T.O.L.). The land, on which was a bungalow, was strategically situated adjoining a main road frontage. The fee increase from RM50.00 a year to RM200.00 triggered a strong protest from the licence holder who, for about two months, refused to pay. The licencee, fearing the non-renewal of his licence, finally gave in and paid the fee after having been issued by the Land Administrator with a show cause letter as to why the licence should not be revoked. Note: Under the then prevailing *State Land Rules*, the Land Administrator was empowered to impose a fee of between RM50.00 to RM300.00 for the said parcel of land. Unlike the annual land rent which lasts for a period of ten years, a T.O.L. licence is subject to a yearly renewal and, other than being empowered to revise the fee annually, the Land Administrator, if he deemed it fit, could even terminate the licence without having to wait until the end of the calender year if the licence holder is proven to have breached any of the T.O.L. conditions. Two other points were highlighted to the researcher by the Land Administrator. First, despite the provisions under the *Rules*, the RM50.00 licence had never been revised for the last 22 years. No wonder the holder vehemently protested at the 300% increase. Secondly, in his view, the Land Administrator thought it awkward for that parcel of land to have been disposed of to someone in the first place, what more to have it continuously renewed for over more than two decades. Such a series of renewals practically amounted to as good as alienating the land for a 'permanent' term of lease. This, however, was explained by the fact that the holder was a former State Assemblyman who wields strong political linkage and enjoys direct access to the *Menteri Besar*.

hectare of agricultural land is fixed at a rate of 0.1% of its value, RM12,000.00 per hectare of land in 1984 would contribute RM12.00 to the state but a RM50,000.00 per hectare value of the same land in 1994 would increase its contibution to the state, in respect of rent, to RM50.00.

Interestingly, despite their once a decade opportunity to revise rents and relatively increase revenue, the most recent revision in 1994 indicates that states had not taken full advantage of the opportunity.[67] Although all states have in principle agreed to revise their rent rates according to the 1994 schedule, by January of that year only the Federal Territory of Kuala Lumpur had implemented the new revised rates.[68] Despite endorsing the revisions and incorporating them into and gazetting them as their respective amended *State Land Rules*, the states deferred their implementation to the following January, 1995.[69] The irony is that, though the financially stable Federal Territory of Kuala Lumpur went ahead with the revision and enforced the implementation of the new rates on schedule, while the other states, whilst financially more desperate and hard-pressed for

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67 The once-a-decade revision schedule does not only provide the State Authority the opportunity to revise its rates of land rents. That is also the opportune moment to review and amend various other aspects of its *State Land Rules*, including the review and imposition of new classifications of land, its categories of use, as well as the rates of service and office fees, etc.

68 Gazette Notification P.U.(B) 123 of 1994 - National Land Code (Revision of Rent) Notification 1994. In June 1994, an ex-parte originating summons was filed in the Kuala Lumpur High Court by the Kelab Lumba Kuda Selangor (the Selangor Turf Club) challenging the Land Administrator's decision to impose new category of land use on the club's approximately 20-hectare premise (CT No. 61790, Lot P.T. No. 2872 in the Mukim of Petaling, District of Kuala Lumpur, the Federal Territory), from its pre-revision implied condition [of use] 'for the purposes of a turf club and for no other purpose' to its post-revision 'commercial' category. By virtue of the revision, the Land Administrator had demanded the sum of RM590,292.00 as rent for the year 1994. This amounted to an increase of almost 1,400 % when compared to the previous rent sum which had 'always amounted to RM42,360.40' a year. The club disputed the imposition of 'commercial' category and argued that its land should instead be categorised as 'sports and recreation - equestrian' or alternatively be classed as 'land that is being used by a society' in which cases, the relevant rate of rent should have been at RM400.00 per hectare or RM2.00 per square metre respectively. Note: The researcher is indebted to Dr. Nik Mohd Zain Haji Nik Yusof, the then Director-General of Lands and Mines, for bringing this case to the researcher's knowledge and for making available the relevant affidavits in August,1994. But until the writing of this thesis the researcher is not informed of the outcome of the case.

69 At the time the proposed revision was considered in late 1993, the country's General Elections was strongly tipped to be held sometime in 1994. Thus, as was widely believed, the rationale for the deferment of the new rent rates until 1995. But as it turned out, the year 1994 ended without a General Elections. As such, implementation of the revised rents was postponed another year to 1996. As it turned out, General Elections finally took place in April, 1995.

revenue, opted for deferment of it implementation,[70] thereby depriving themselves of substantial sums from the number of year's increased revenue.

No clear reason has ever been offered for the states' consensus to defer the implementation of their revised rent rates. Two strong explanations emerged. The first attributed it to a mere technicality. From the early second half of 1993 to the end of November, the National Land Council[71] failed to convene when it was supposedly scheduled to consider, among other things, the revision of rent proposal. In an unprecedented move, the Deputy Prime Minister, as chairman, 'convened' the Council late towards the end of the year. As regards the proposed revision, consent of all the state Chief Ministers was frantically obtained by circulation[72] and, by the time the consensus was reached, it was technically too late for the states to have them implemented the following January.[73]

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70 The States having officially 'implemented' the revision 'on schedule' (that is, with effect from 1 January 1994), granted a remission of the new rent rates for one year. Under section 14(1)(j)of the *Code* the State Authority is conferred the jurisdiction to 'make provision with respect to...the collection, remission, rebate, payment by instalments or deferment of payment of any item of land revenue...'

71 This was partly attributed to the contest which took place in the United Malay National Organisation (UMNO) party, the senior ruling party of the government, for the deputy presidency, between the then incumbent deputy president of the party (also the then the Deputy Prime Minister), and his challenger the Minister of Finance. Since by convention the deputy president of UMNO would also become the Deputy Prime Minister, the contest had had a direct bearing on the functions of the Deputy Prime Minister. Partly due to the atmosphere of the run-up to the contest, the National Land Council, to which the Deputy Prime Minister acted as chairman, was also affected. In their meeting in mid-November 1993, the State Directors were already made aware that the National Land Council would not be convened by the end of the year. Instead, approval of the Council for revision of rent under Section 101(5) of the Code would be obtained by way of a 'circular.' As such, States not intending to implement the revision in 1994 were accordingly advised to grant remission of rent for the year (1994). State Director of Lands of Malaysia Meeting 2/1993, Paper No. 12/1/93: 'Penetapan Tarikh Penyemakan Cukai Tanah di Bawah Seksyen 101 Kanun Tanah Negara.'

72 It was commonly suspected that the delay in reaching a consensus was caused by a deliberate attempt by the opposition-led state government of Kelantan. It was revealed later that instead of Kelantan, it was Penang, the new Deputy Prime Minister's own home-state, which had hesitated over the proposed revision and had thus caused the delay. That also explained the Deputy Prime Minister's 'diplomatic haste' between Kuala Lumpur and Penang the last couple of days of December 1993.

73 This was despite their early groundwork and the setting up in February 1992 of a special committee under the chairmanship of the Director General. State Directtors of Lands and Mines of Peninsular Malaysia Meeting 1/1992, Paper No. 7/1/92: 'Penyemakan Cukai Tanah Berimilik di Bawah Seksyen 101 Kanun Tanah Negara.' As it turned out, with the exception of the Federal Territory Kuala Lumpur which went ahead with its own final preparations, the rest were caught off-guard when consensus was reached.

Another popular and more plausible explanation was that the State Authorities had chosen not to implement the revised rents in Jannuary and had deferred them to 1995 for political reasons. It was widely suggested among senior civil servants that the then pending general elections[74] were the most crucial factor, for any increase in land rents would displease the public and potential voters. Apart from presenting rent remission as a gift to the public, there was genuine concern for negative socio-political implications in any move to increase rents.[75]

Considering the urgent need to stabilise and boost state revenue from land rents, the State Authority ought to consider amending two aspects of the provisions in the *Code*:

(a) to shorten the revision of rent interval from the present ten years to five years. A five-year time-frame seems more reasonable being neither too long nor too short, and

(b) to change the basis for calculating annual rent from that of a fixed rate to that of a fixed percentage based on the classifications of land and their categories of use.

Whilst reviewing the classifications of land and the categories of its use, the State

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74 Since the last general elections were held in 1990, the Federal and State Governments' five-year mandate was scheduled to end in mid-1995. The general elections which were widely expected to be called any time in 1994, finally took place in April 1995. With a landslide victory, the ruling National Front Party (BN) not only retained control of the Federal Parliament with bigger majority but was also returned to power in all the states, except Kelantan which remained in the hands of the opposition Islamic Party (PAS). In addition to securing a few more additional state seats in Kelantan, the National Front regained control of the state of Sabah from the ruling opposition Sabah United Party (PBS).

75 The Deputy Chief Minister of Kelantan, however, dismissed such suggestions of political overtures or election gimmicks. He instead offered the explanation that the Kelantan State Authority was not prepared to increase rents, except on freshly alienated lands or on lands with new categories of use, for he argued that imposition of rents was only justified if services have been rendered to landowners. In theory his argument is sound in principle, but in practice it is seriously flawed, for it would be contradictory and unjustified for the Kelantan State Authority to impose any rents on freshly alienated land or on land with new categories of use when service is not fullt rendered yet. Worse still is the fact that the State too deferred the implementation of the revised rents for one year (i.e. supposedly for 1994) only, implying therefore that it would be implemented the following year. It is highly improbable that services would tremendously improve within just over a year.

Authority ought also to decide on the rate of rent to be imposed on fallow land or lands which are not put to productive use.[76] This would serve the dual purpose of spurring on the proprietors to utilise their lands rather than having to pay 'higher rent' for its non-utilisation, and of circumventing rent default excuses by some proprietors who attributed it to uneconomic or zero returns from their lands. The necessity for such a 'penalty for holding land undeveloped' is felt more urgent considering the fact that in a study carried out in 1987, it was reported that the total size of all fallow lands in Peninsular Malaysia had reached so massive a proportion that if clustered together they would cover the whole state of Negeri Sembilan and part of Malacca.[77]

(d) Privatisation of Rent Collection.

Unless state land administration prioritises its tasks, arrears in land office work will remain in abeyance, as they had in the past. Not that this necessarily implies the absence of any desire on the part of land officials to settle long outstanding commitments. Rather, it reflects heavy logistical constraints encountered by land offices over the decades. Unless other arrangements are made, given the limitations, it would appear humanly impossible for land offices to resolve their work arrears efficiently.

As has been the practice of land offices, past and present, registered private surveyors are engaged to undertake final survey work to help speed up the preparation and issue of qualified and final titles.[78] The whole purpose of this exercise is to ensure

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76 This is in addition to remedial action enforceable under the *Code* for breach of condition. In Australia, it was suggested that States should demand a contribution based on the 'rent-potential' of lands, regardless whether or not they were put to use, for the demand would tantamount to 'the cost of holding land under-developed.' A.R. Hutchinson, *Land Rent As Public Revenue in Australia*, Centenary Essays, No. 3, Economic and Social Secience Research Association, 1981.

77 The Economic Planning Unit, Negri Sembilan briefing paper on fallow land rehabilitation scheme, 1989. Probably the latest, figures from the National Economic Consultative Council showed a totall of 900,000 hectares of fallow land, as cited by Nik Abdul Rashid NikAbdul Majid, 'Undang-undang Tanah: Cara Eksploitasi Mengikut Islam dan Sekular,' in a paper presented at Seminar Sharah dan Common Law di Malaysia, Prime Minister's Department, May, 1992.

78 Under normal circumstances, say, upon fresh alienations, sub-divisions or acquisition of lands, the land office undertakes to prepare qualified titles. This is done by the office Settlement Officer carrying out settlement survey to demarcate the boundaries and to assign a land office number. Prior

more efficient surveys and faster preparation of titles, and it not only helps to relieve land offices of their heavy workloads but also allows land officials to attend to other presumably more pressing priorities. Privatization[79] of rent collection, therefore, ought to be considered. After all, there had been 'privatised' collection of land revenue in the past, though in many different forms.[80] Furthermore, another aspect resembling the

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to the issuance of final titles, a more accurate survey would be undertaken by the Survey Department. Even in straightforward cases, it takes some time for the final survey to be completed. Therefore, to avoid more arrears of work for both the land office and the survey departments, it is common practice for land offices to engage private surveyors to undertake the work in cases involving the preparation of a large number of titles. Their work is subject to certification by the Survey Department and the cost is borne by the respective land title-holders to be.

79 Privatization can be pursued for various purposes. Peter Saunders and Colin Harris (*Privatization and Popular Capitalism*, Birmingham: Open University Press, 1994) list about ten such purposes, ranging from simply improving government finances by way of less public borrowing and sales of public assets, to as sophisticated as creating 'popular capitalism.' As for Malaysia, privatization, successfully experimented with since the early 1980s, is pursued with the objectives of:

(i) relieving the financial and administrative burden of Government,
(ii) improving efficiency and productivity,
(iii) facilitating economic growth,
(iv) reducing the size and presence of the public sector in the economy, and
(iv) helping meet the national economic policy targets.

See *Privatization Masterplan*, Economic Planning Unit, Prime Minister's Department, Malaysia, Kuala Lumpur: 1991.

80 Basically implying the state contracting out to its officially appointed representatives or collectors of revenue in whom were delegated the authority to exercise certain rights or powers within stipulated areas in return for a stipulated payment or commission, enjoyment of specific privileges or leases, monopoly of trade, or sharing of produce or profit. From the early practices of tax-farming, the Ottoman *mukataat* [muqāṭaʿāt] and the Indian *Zamindars*, the systems have evolved into new concepts of government's divestiture, corporatization and privatization. For the early Ottoman and Indian experiences see Halil İnalcik, (ed.) with Donald Quataert, *An Economic and Social History of the Ottoman Empire, 1300-1914*, Cambridge: Cambridge University Press,1994; Bruce McGowan, *Economic Life in Ottoman Europe: Taxation, Trade and the Struggle for Land*, Cambridge: Cambridge University Press, 1977; B.H. Baden-Powell, *Land Systems of British India*, 3 vols., London: Oxford at the Clarendon Press, 1822; John G. Butcher and Howard Dick, *op. cit.*; Husain Imtiaz, *British Land Revenue Policy in North India: the Ceded and Conquered Provinces, 1801-1833*, Calcutta: New Publication Ltd., 1967; Thomas R. Metcalf, *op. cit.*; Noman Ahmad Siddiqui, *Land Revenue Administration under the Mughals (1700-1750)*, London: Asia Publishing House, 1970. For contemporary U.K. experience see Leroy P. Jones, Pankaj Tandon and Ingo Vogelsang, *Selling Public Enterprises*, Massachussetts: The M.I.T. Press, 1990; Bryan Hull, *Privatization and the Public Sector*, Oxford: Heinemann Educational, 1989; David Steel and David Heath, (eds.), *Privatizing Public Enterprises*, Royal Institute of Public Administration, 1984. Macleod, *op. cit.*, p. 190, even ventured to suggest that the word 'farm' which had now come to mean 'the cultivation of land' initially meant the letting out of land for cultivation. For the prevalence of 'pajak' (leases) as practiced by Malay rulers in Trengganu and Kedah, see Shaharil Talib, *After Its Own Image: The Trengganu Experience 1881-1941*, Singapore: Oxford University Press, 1984, and Sharom Ahmat, *Tradition and Change in a Malay State: A Study of the Economic and Political Development of Kedah, 1878-1923*, MBRAS Monograph No. 12, 1984, respectively. Whereas Shaharil focused on the 'pajak' of land, Shaharom's listing of 27 items of trade suggests the Kedah 'pajak' being in the forms of commercial monopolies.

'privatisation' of land office work, which has been and is still being practised, is the official appointment by the land office or the High Court of private auctioneers to undertake the auctioning of lands involved in foreclosure cases under Sections 263 or 257 of the *Code* respectively.[81]

As can be anticipated, despite the obvious benefits of relieving the financial and administrative burden of the Government, encouraging competitiveness, and improving efficiency and productivity,[82] State Authorities might have strong reservations over the viability of the proposal for privatisation of land rent collection. This, in part, is due to the fact that land administration is strongly centralised in the State Authority in spite of the delegation of some of its operational powers to its gazetted land officials.[83] Therefore, suggestion of any form of privatised collection which, directly or otherwise, implies the divesting to non-state officials of the right to exercise the power of the State Authority, would unavoidably entail some 'loss' to the State Authority of its influence and grip on the matter.[84] Despite the expected efficiency, privatising the collection may, in the final analysis, not guarantee the State Authority substantially greater revenue, for the State Authority in turn has to pay for the privatised services. Apart from the 'financial loss', such highly regulated ventures as that of land administration may discourage prospective bidders or even give rise to unforeseen intricate legal matters.

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81 The auctioneer is enabled to execute the auction on behalf of the land office or High Court. In this situation, despite being deprived of the commission to be gained from any successful auction if it were carried out by them, the land office or the Court, nevertheless, still gains by virtue of being relieved of the final part of the foreclosure, thereby enabling the deployment of its attention to other matters. The auctioneer, on the other hand, makes a financial gain out of the exercise by earning the auction commission.

82 Mahathir Mohamad, *Malaysia: The Way Forward* (*Vision 2020*), Kuala Lumpur: National Printing Department, 1991, p. 17.

83 A report by Prof. Esman suggests that the centralising tendency in the State Authority in matters affecting land is felt more greatly now under the provisions of the *Code* than it was previously under the *Cap. 138*. See, *Land Administration: A Study on Some Critical Areas*, the Development Administration Unit, Prime Minister's Department, Kuala Lumpur:1968. The report was prepared by Professor Milton J. Esman who also authored *Administration and Development in Malaysia*, Ithaca: Cornell University Press,1972.

84 As argued by Saunders and Harris, *op. cit.*, depoliticizing managers and allowing them the freedom to manage is one of the bedrocks of privatization.

Nevertheless, in the hope of relieving the increasing workload of land officials, to clear arrrears, and to reduce loss, the State Authority should venture into the possibility of privatising land rent collection. For a start, the State Authority can perhaps experiment with privatisation by limiting the initial exercise to the collection of rent arrears only, beginning with those proprietors from whom are due large sums or who have been in a long period of default. Considering the difficulty of recovering the bad debt of arrears and the distinct possibility of disproportionate returns, coupled with land officials' inertia over the long-outstanding problem, the State Authority will probably gain from privatising the collection of its rent arrears to collection agencies, legal firms or qualified individuals. Rather than leaving the arrears to keep accumulating over the years only to finally having to write them off at some point in time, it would be far better for the State Authority to attempt privatising the collection.[85] Specific details, however, would have to be worked out to determine the boundaries of jurisdiction and authority between the privatised agency and the land office so as to minimise possible legal complications.

It has to be said, however, that not all privatisation will end in success, both to the privatised concern and the divesting authority. The irony is, whilst the State Authority may want to experiment with the safest course by privatising the 'least profitable' of its public enterprises, prospective bidders on the contrary, and logically so, will only be inclined to participate in a venture that is 'most lucrative and least problematic' in their estimation. This conflict of interests will pose the first deadlock which has to be resolved.

Next is for the State Authority to exercise caution and undertake damage limitation precautions if faillure is anticipated from any of its proposed privatise ventures. One is by controlling the experiment to a couple of years of 'trial runs' in a selected small land office and by privatising only the collection of arrears. Whether or not a regulatory body is necessary to oversee the next stages of the privatised collection of rent is to be assessed only if the trial runs prove viable. As in the case of 'privatised' surveys and auctions, similar legislative provisions or administrative guidelines can be introduced to

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85 Alluding to the practice in early Straits Settlements of farming out tax revenues, John Cameron implied that resorting to that was better, 'for the Chinese were well-known for their tax evasion.' (*Our Tropical Possession in Malayan India*, Kuala Lumpur: 1965, p. 210).

complement the *Code*.

(e) Revamps of Land Administration.

States' financial manouverability has always been limited. The percentage of annual estimates budgeted for management purposes[86] has always been considerable, far exceeding revenues. Greater strains on state finances would be felt if on-going development commitments were added to management expenditure. Situation of this nature just would not easily permit plans for additional manpower if ever it were contemplated by the State Authorities. The fact is that even to cater for a public sector pay rise, which conventionally took place once every five years, the states' logical recourse was to Federal Government loan. This underlines the reality that so far, any further expansion of the states' machinery would be beyond their financial reach.

Hard-pressed for additional staff for its revenue-generating land administration but overstrained by its budget, the only way for a State Authority to circumvent the situation is by maximum utilisation of whatever resources are available. One of the means to achieve this is to review its administrative structures and undertake necessary reforms, in terms of a trimming down exercise, a review and revamp of staff and departmental functions or a merging of agencies with common or overlapping functions. As far as land management is concerned, since the inception by the British of the system of land administration, there had not been much structural change and the system had grown out-dated.[87] With the exception of the 'Johore model' which separates land administration from district office structure and functions, the present system has prevailed throughout the Peninsular.

Typical of any government departmental set-up, land administration in general,

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86 For the period 1987-1994, states in Peninsular Malaysia combined, spent a total of RM 4,407 millions on emoluments alone. This exceeded by almost 26% their tax revenue total of RM3,502 millions, of which, RM2,352 millions or 67% is from land rent. Refer Table 5.2.

87 *Land Administration: A Study on Some Critical Areas*, Development Administration Unit, Prime Minister's Department, Kuala Lumpur: 1968, p. 1.

and the land offices in particular, experience a dilemma. Financially they are subject to rigid budgetary provisions and procedures. The needs, either for monetary allocation or manpower establishment, of land administration, are examined annually by the State Finance Office which, in turn, adheres strictly to policy guidelines and procedures set by the Federal Ministry of Finance. As for the establishment, upgrading or filling up of new or existing posts, approval have to be obtained from the Federal Public Services Department. In other words, whilst the State Government is constrained by set Federal Government policy guidelines and procedures, it, in turn, ensures the conformity of the entire State administrative machinery. For so long as land administration remains a state department, room for manouvre, both financially or establishment-wise, is much restricted. Two administrative reforms which can sensibly be considered to improve the situation are the transformation of land administration as a department into a corporation, or the merging of land offices with other departments.

(i) Corporatization of Land Administration.

To enable better handling of its own needs and greater flexibility over budgetary allocations and manpower requirements, land administration machinery will have to be reformed and be shifted away from its present administrative perimeters. As part of the conceptual whole of privatization, another prospective avenue which merits consideration is the corporatization of land administration. Corporatization occupies the mid-way stage between the process of commercialization of a government department and that of the divestiture of the departmental functions into a total private venture entity. By commercialization is meant the introduction in a government department operation of user charges, followed by a change of its public accounting procedures and systems to that of the commercial, and the shift from the purely social-oriented service of the department to new commercial-driven performance objectives. As a progression from the commercialization stage, corporatization entails the changing of the status of a government department or statutory body entity into a government-owned company.

Under the Malaysian privatization plan, the transformation of the entity under the *Companies Act, 1965* means that whilst all the assets and liabilities of the previous

department or statutory body are transferred to the company, the new government-owned company will operate on commercial lines. Enhancement of productivity and efficiency can be expected of the new corporation by:[88]

(i) the replacement of bureaucratic administration with commercial management;

(ii) the introduction of clear financial and operational performance targets and commercial accounting; and

(iii) the replacement of centralised production-oriented decisions with consumer and market driven decisions.

In the context of land administration, under the corporatization concept, a State-owned land administration corporation[89] would evolve. Though still performing public services and remaining responsible to the State Authority, public corporations are considered non-governmental and not subject to rigid Treasury and Public Services Department controls on finance and staffing.[90] The fact that it remains a State-owned venture spells a possible paradox. On the one hand, it will be assured of full support of the State Authority, for they still retain complete control over matters affecting land. Thus, the chances of the State Authority resisting the possibility of such a corporation coming into being will be reduced. Since under normal circumstances important state-corporations or statutory bodies[91] are chaired by the *Menteri Besar* himself, there is strong likelihood that the land corporation, should it become a reality, will also be headed by the *Menteri Besar*. With the *Menteri Besar* at the helm, one would expect the corporation to perform better than its previous outlook as an ordinary department.

On the contrary, however, the fact that the corporation would be under the direct

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88 *Privatization Masterplan*, *op. cit.*, p.83 .

89 Perhaps it may be known as State Land Corporation, State Land Corporation, State Land Management Corporation or State Land Development Corporation.

90 Milton J. Esman, *Administration and Development in Malaysia*, Ithaca: Cornell University Press, 1972, pp. 87-88.

91 Like the State Economic Develpoment Corporation and the State Equity Trust Corporation. In fact, in some states, the main local authorities in the state capitals are also chaired by the Menteri Besar.

influence and control of the State Authority may prove to be the cause of its undoing. Despite the presumably better all-round financial autonomy and logistical support to be expected of a corporatized land administration, given past and prevailing experience of heavily centralised and highly politicized land administration, the convention of having such a corporation chaired by the *Menteri Besar* may prove counter-productive. Instead of the *Menteri Besar* delegating the power of the State Authority to the State Directors and his subordinate land officials as is currently the practice, executive power under the corporation would now be centred in the *Menteri Besar* himself. There will be no guarantee that a management under the direct chairmanship of the *Menteri Besar*, or even a senior member of his State Executive Council, will not be highly politicized and be able to exercise the desired management freedom.[92]

A state Land Management Corporation is conceived as the sole custodian of all State lands and will operate as a land bank. In a sense, in a radical departure, apart from also functioning in its traditional land office role as safe-keeper of titles and maintainer of records, the corporation will also be directly involved in land development schemes and other commercial ventures utilising land as the capital. One example of such flexibility of involvement in commercial venture is the one experimented by the Johore State Authority whereby for a piece of prime land alienated to a private company, it was agreed that the company in question would in returnd develop the area, including the constructing for and on behalf of the State, of a multi-million-*ringgit* worth of a public transport central station. In this joint-venture exercise, the State gained much more revenues from its land capital investment in the form of the transport central station than from merely premium and annual rents.

(ii) Inter-departmental Merger.

In the past there had been calls for serious consideration of the possibility of

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92 Datuk Hassan Ibrahim (interview - 27 August, 1994) voiced his strongest reservation over the viability of a corporatization of land administration under the chairmanship of a Menteri Besar. He contended that as head of the State Authority, the Menteri Besar 'will definitely not allow the creation by a successful corporation of an empire within the State'.

merging the land office with other land-related departments. Perhaps basing on the experience of early Penang and Singapore, in 1860 the Surveyor-General of the Straits Settlements suggested the amalgamation of the Survey Office and the Land Department.[93] The proposal was renewed by H. Conway Belfield, the Commissioner of Lands and Mines of the Federated Malay States who, in his report[94] almost immediately upon the coming into being of the Federation in 1896 called for the merging of three departments, namely that of lands, survey and mines, citing it as a strategic move to overcome demarcation and survey problems. Prior to 1891, the departments of Miners and Surveys in Perak were branches of the Land Office, though not so in Selangor. The fact that the three departments remained separate to this day proves that either no follow-up had ever been taken on the proposal or that it was not considered viable. Of the three mentioned departments only the land office remained a state department.

For the purposes of minimising administrative costs whilst maximising available resources and for generating greater efficiency and productivity, the State Authority ought to reconsider the viability of a proposal for the merging of departments. One option is the merging of the survey department with the land office. The fact that one is a Federal department whereas the other is that of a State would necessarily require further deliberations at the Ministry or the National Land Council level. But their generally close inter-relatedness and overlapping functions in many areas, may justify such a venture.

Another option is to bring about total separation of the land office[95] from its present status as a sub-entity of the district office. Apart from historical reasons, there is no credible reason why a land office should remain as it is at present when it is obvious

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93 *CO/273/5*: No. 109 of 1860 - Nararative of the Proceedings of the Court of Straits Settlements During the 1st Quarter of 1860. Collection 24.'

94 *HCO(FMS) Selangor 601/96*: 'Report on the Departments of Lands, Mines and Surveys, Selangor, 18 October, 1896.'

95 According to Nik Mohd Zain, ('Land Tenure and Law Reforms in Peninsular Malaysia'. Unpublished Ph.D. dissertion. University of Kent: 1989), this issue had been discussed at the National Land Council level in 1958 and 1974.

that a District Officer,[96] who is also the *de jure* head of the land office (being the gazetted Land Administrator), is virtually unable to provide the much needed effective leadership.[97] Ironically, whilst the District Officer is too busy to attend to land matters,[98] his senior Assistant Land Administrator, who, as the *de facto* head of the land office, is expected to play the 'effective leadership' role by supposedly having to concentrate on land office work only, also quavered, for as a gazetted senior Assistant District Officer, his attention is also diverted to the plethora of other district office functions.[99] Unless separation is pursued, the vicious circle will continue and end up without much improved performance.

Apart from the option of inter-departmental merging between Federal and State departments or separation of the land office from the district office, another possibility is the combination of the two. The option is for the present organizational structure of the land office to be revamped by separating it from the district office but, instead of merging it with a Federal department, it would perhaps be much easier to subsume it under the respective local authority which is also within the constitutional jurisdiction of the state. Other than also operating as an agency answerable to the State Authority, the land office functioning as a a better-equipped division of the larger local authority can be expected to be more efficient and effective, for under the local authority's structure it can now

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96 With the exception in the state of Johore.

97 Alluding to the weaknesses, poor and unsatisfactory state of rent collections, Nik Mohd Zain Haji Nik Yusof, *op. cit.*, attributed it to 'ineffective leadership' of the land office.Citing some findings of studies conducted by MAMPU (the Modernizatuion of Administration and Manpower Planing Unit of the Prime Minister's Department), INTAN ((the National Institute of Public Administration) and the Ministry of Lands and Regional Development, Nik Zain concluded that 'although the D.O. [District Officer] is the head of the land administration of the district...[it] occupies only a little of his attention...[He] is tied up with a plethora of...other functions...', p. 64 He also reiterated that findings in 1980 showed that 'about 90% (one and a half meetings per day) of the D.O.s time was spent presiding at meetings...', p. 99. As a strong advocate for a separate land administration, Datuk Abdul Manaf once saw that in a unified District and Land Office, the District Officer is prone to 'postponing decisions' on matters affecting land. *SL 65*: 'History of Land Administration' an oral documentation by Datuk Haji Abdul Manaf Mohd Noor, the former Director-General of Lands and Mines, as recorded by the National Archives of Malaysia, December 1978-February, 1979.

98 Most District Officers / Land Administrators are also Presidents of their respective local authorities.

99 The situation is reminiscent of the 'many worlds of the District Officer' whose office shortage of staff, in the words of one Provincial Commissioner in British Tangayika, resulted in the District Office 'doing little more than marking time and getting done the work that comes...without...attemptinf any progressive administration.' Robert Heussler, *British Tanganyika: An Essay and Documents on District Administration*, Durham: Duke University Press, 1971, p. 23.

easily secure and utilise the assistance of professional services of the local authority's legal officers, valuers, accountants, planners and other technical staff in performing its tasks.[100]

(2) New Constitutional Arrangement.

Apart from the guaranteed capitation grant and State road grant which are made out to the States by the Federal Government under Article 109 of the Federal Constitution, the States are also assigned taxes, fees and other sources of revenue.[101] Article 110 stipulates that these sources are those specified in Part 111 of the Tenth Schedule of the Consitution and they are assigned to the States in so far as they are 'collected, levied or raised within the respective State.'[102] Under Section (2) of the same Article, Parliament may substitute for another source of revenue of equal value those sources of revenue except that specified as items 2, 9, 10, 11 and 13 under the list.

In addition, under the following Section (3), subject to terms and conditions stipulated under Federal law, each State shall receive ten per cent or more of export duty on tin produced in the State. The State's eligibilty to a share of its source of revenue was further broadened by the introduction through an amendment, of another sub-section (3A), to include in the items of the export duty, apart from tin, 'other minerals', meaning mineral ores, metal and mineral oils.[103] Without prejudice to the sections mentioned above, under section (4), the Article stipulates that,

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100 Depending on the strength of the local authority, it is anticipated that legal-related land office procedures and operations, say that pertaining to aspects of rent collection or arrears recovery details, can presumably be delegated to legal officers. So too is the ready assistance from local authority of surveyor and valuer to be obtained by the land office in matters related to land survey and acquisition.

101 L.A. Sheridan, *Malaya and Singapore: The Borneo Territories - The Development of Their Laws and Constitutions*, London: Stevens and Sons Ltd., 1961, pp. 92-93. Separate provisions for assignment of revenues are made for the States of Sabah and Sarawak under Articles 112C and 112D.

102 See Appendix 5.6 for the list of sources of revenue for the States.

103 But unlike the clause on tin which specifies a 'ten per cent or such greater amount', under the new clause the proportion is indefinite, for it is subject to the clause of 'as may be so prescribed'. In a clause under another sub-section (3B), Parliament retains the right to prohibit or restrict the levying of royalties or similar charges in respect of minerals.

'Parliament may by law -

(a) assign to the States the whole or any portion of the proceeds of any tax or fee raised or levied by the Federation; and

(b) assign to the States the responsibility of collecting for State purposes any tax or fee authorised by federal law.'

It is significant that while substitutions can be made by the Federal Government to nine out of the fourteen items in the list in Part III of the Tenth Schedule, land remains one of those 'untouchable' by it. In theory, this constitutional safeguard betrays the strength of the State's jurisdiction, and to Sheridan, the fact that the jurisdiction is over 'land matters' bespeaks of its importance in the context of 'Malaya, where such a large proportion of the economy depends on what is grown on or dug out from the land.'[104] But, whether or not the theoretical constitutional strength matches the financial and political reality, is another matter. It is a known fact that while states like Kelantan and Trengganu were once struggling, the tin-rich states like Perak and Selangor were benefitting from Section (3) of Article 110. But when sources of tin became depleted and the price of tin plummeted in the late seventies, Perak's annual budget was adversely affected. In a turn of events, the discovery of petroleum off the coast of Trengganu transformed the state into a *nouveau-riche* among the states.[105] Section (3A) had provided Trengganu with a much needed revenue to fund its development efforts.

As exemplified above, royalties from tin and petroleum have proven to be a crucial factor in the finances and development pace of the states of Perak and Trengganu. Unfortunately revenue from land rent does not reflect the vital importance of land as a factor of production.[106] In a hypothetical illustration, a hectare of prime

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104 Sheridan, *op. cit.*, p. 51.

105 See Appendix 5.7. for a glimpse of the amount of royalties received by the various states in Peninsular Malaysia for the 1987-1994 period and the envious position of Trengganu.

106 In his 'Land as a Distinctive Factor of Production' (in Nicolaus Tideman, (ed.), *Land and Taxation*, London: Shepheard-Walwyn (pub.) Ltd., 1994, pp. 38-104), Mason Gaffney, persuasively argues his case for the unique significance which land occupies as an all-influential factor of production.

land alienated by a State in the north of the Peninsular in the late 1970s for industrial purposes only brought the State the direct benefits of a premium of some RM400,000.00 and an annual land rent of RM2,500.00. But when an industry is finally set up and operates on the site, the Federal Government reaps millions of *ringgit*s in the form of income taxes every year. Of course, apart from the premium and the recurrent rent, indirect benefits are also gained by the State by the creation of employment for the local population and by the likely spill-over effects of the industry on developments in the surrounding area.[107] In terms of direct revenues, however, whilst the State 'invests' with its piece of land in exchange for a yearly remuneration of RM2,500.00 revisable only once a decade, the Federal Government gains millions more from taxes, theoretically though not in practice revisable, every year.

Situations like the above put the State Authority in a dilemma. To impose a high premium and to revise its rent rate much higher than previously might deter prospective investors from venturing into the State. At the same time, to retain a competitive edge abroad and to create employment in the country as a whole, State Governments are expected by the Federal Government to offer more attractive incentives to investors.[108] It is in this context that a new formula equation within the existing constitutional framework needs to be found so as to ensure the viability of land rent as a source of revenue for the State commensurate with the strength of its provision in the constitution. The time may now have come for land as a 'distinct factor of production' to be treated as an equal of tin and be listed among 'other minerals' as well.

As a consequence of the above, it is proposed that instead of leaving the states

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107 In reality, however, accompanying the economic spill-over, are the likely negative effects or otherwise, of the industry upon the environment area and the socio-cultural values of the population.

108 In his interview (7 August, 1994), the Deputy *Menteri Besar* of Kelantan expressed such a dilemma. He admitted that being a Government in the opposition, the situation is made all the worse. Not to heed 'Federal calls' for flexible premiums and rent rates would mean that Kelantan are likely to lose its competitive edge to its neighbouring States. But heeding it would be tantamount to the State Authority being virtually unable to take full advantage of its 'power over land matters'. Presented with such a difficult choice as that, his Government relented and heeded the Federal Government's policy guidelines.

with meagre income from annual rents, the National Land Council should deliberate on the sensibility of states abolishing the rents and be compensated with a new 'land tax royalty.' This royalty should be a certain percentage amount deductible from the total amount of income tax payable by the bodies corporate to the Federal Inland Revenue Department.[109] It is realised, however, that since this proposal will entail modifications to the existing financial arrangements under the constitution, it has to be further studied by a special committee. A twin-track approach will have to be considered by the committee, for apart from effecting the proposal on bodies corporate, its implications on other individual land proprietors have also to be addressed.

Islamic Perspectives on the Proposed Alternatives.

As alluded to earlier, in 1983 the Government officially launched its adoption of the policy of 'internalisation of Islamic values in the administration (IIVA).' Since then 'Islamic values'[110] has become a rejuvenated subject of conscious relevance in the Government agenda. The public too has grown used to the convenience of gauging the 'Islamicity' of the Government in their evaluation of not only its administrative machinery but also virtually all aspects of Government businesses including the formulation of official policies and the planning and execution of developmental efforts. It is in the light of this that land rent administration alternatives proposed earlier is to be viewed.

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109 This new royalty is supposedly to be a hidden tax. It is a not a separate item of tax from the income tax payable but forms part of it. The actual percentage has to be discussed at the National Land Council level though unlike tin and other minerals, a ten percentage figure is not envisaged. In fact, as illustrated in the hypothetical case, even a royalty of, say 2.5 percent, deductible from the total income tax payable to be collected on behalf of the respective State Authorities by the Federal Inland Revenue Department would ensure a more commnsurate land revenue for the states. Given the fact that land offices presently collect survey fees as a Federal revenue, collection of 'land royalty' as a State revenue by the Inland Revenue Department should not pose much accounting problem.

110 Apart from the socio-cultural and historical factors, the prominence of Islam in Malaysia is partly attributed to its being officially 'the religion of the Federation' [Article 3(1) of the Federal Constitution] though 'other religuions may be practised in peace and harmony.' In defining the terms of its IIVA policy, the Government was cautious and exercised restraint, confining them only the adoption of Islamic 'universal values' which are also shared by other major religions and traditions.

The dispensation of one's responsibility preceding one's claim to any right has always been the overriding Islamic precept. Hence in the context of land tenure the clearing of land, its cultivation, constant nurturing and maintenance in good husbandry form the prerequisites to a man's prospective claim to proprietary right. Token cultivation or enclosing a land alone does not confer on any man the right to the land. In like manner, the State's authority to manage land, to impose rent, to claim its payment, to enforce penalty on defaulters, and to intervene where necessary to safeguard public interest (*maṣlaḥah ᶜāmmah*), is to be measured against the extent and efficiency of its services rendered to the public.

As far as the current rent is concerned, there is no instance to prove that its imposition poses a burden to landowners. The rates payable on all classes of lands and its categories of uses are relatively low. It is difficult to find a case whereby the rate of rent payable proves to be beyond means of the landowners to pay, for the amount hardly constitute the equivalent of 1% of the actual land value. Taking agricultural land as a case, it is obvious that the percentage of rent payable to the State under the present land law is far too low compared to the ten percent (*ᶜushr*) or five percent (*niṣfu ᶜushr*) of *zakāt* on agriculture produce and 2.5% *zakāt* on other items of trade under Islamic law.[111] This is apart from the fact that whereas land rent is payable per calendar year, *zakāt* on agricultural produce in Islam is payable per crop production. In this respect, the fairness of the current land rent rate is obvious, as is also readily admitted by housing developers interviewed.[112] This establishes the fact that the amount of rent is not a matter of dispute or an excuse for default, and therefore by the enforcement of its imposition on the land proprietors the State Authority is not exerting a burden of hardship on them.

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111 Strictly addressing the category of agriculture land alone, a *ḥadīth* narrated from ᶜUmar stipulated that 10% is payable on land watered by rain, spring or water from the ground whereas 5% is from other means of watering. From another *ḥadīth*, Jābir r.a. narrated that 10% is due from land watered by a river or rain, while those watered by irrigation is liable to 5%. Yūsuf al-Qarḍāwī, *Hukum Zakat*, Drs. Salman Harun, Drs. Didin Hafidhuddin and Drs. Hassanuddin, (trs.), Singapore: Pustaka Nasional Pte. Ltd., 1973, p. 331. Amost forty similar aḥādīth are quoted in Yaḥya bin Ādam,*Kitāb al-Kharāj*, A. Ben Shemesh, (tr.), *Taxation in Islam*, vol. 1., Leiden: E.I.J. Brill, 1958, pp. 77-82.

112 Refer p. 199 and p. 202, Chapter Four of this study.

The ten-year rent revision interval under the *Code* adds credibility to the fact that the prevailing practice is indicative of the State's leniency towards the people. This is further strengthened by the provision under section 101(4) of the *Code* which practically debars the State Authority from taking into account 'increases in land values attributable to improvements.' If a parallel can be drawn from the Prophetic traditions above for the determining of the percentage of rate leviable on agricultural land, then the spirit of the law of section 101(4) does fall in line with the Islamic recognition for human efforts. Brief analysis of the above *aḥādīth* clearly indicates that whereas a ten percent tax is payable by cultivators who obtained water from the natural bounties of Allāh, a 5% reduction is to be applied to other cultivators who chose not to resign to fate. The latter is indicative of the authority's reward and incentive for those who are creative, who make strong endeavours and who are prepared to invest in further costs to enhance their cultivation, such as when by their own ingenuity and enterprise they construct irrigation works or erect water-wheels, or they carry water by means of buckets or water-carrying animals.

In so far as it forms part of a contractual agreement in a land alienation, the State land administration is justified in collecting rent having rendered the basic services of safe-custodianship of the land title and the maintenance of its record. The onus, in turn, is on the individual landowners to pay the rent whenever it is due. The central issue to be examined is the implications under the *Code* of non-payment of rent, and whether or not forfeiture is, in the final analysis, justified. It has to be observed that under the *Code*, not only is a Land Administrator not obligated to send a reminder letter to a defaulting landowner to advise him of the payment or the possibilily facing the consequences of forfeiture of his land, there is also no compulsion on the Land Administrator to even send the proprietor a rent bill. Mandatory service of notices only starts with the official commencement of recovery action when Form 6A is issued.

Questions arise from the above which gives the impression that every landowner is assumed by law to know his obligation towards the State as regards the payment of rent. He is also assumed to be aware of the date the rent is due and the

implications upon his failure to pay. In other words, by the mere fact that a piece of land is alienated to him, he is deemed to be in a contractual agreement, *inter alia*, to pay his rent, and is therefore, not conferred the benefit of the doubt of the possibility of him being ignorant of the law.

Under section 100 of the *Code*,[113] a landowner's default of his rent may result in the forfeiture of his land. The prevailing office practice, however, still seems deeply flawed. Firstly, upon the approval to an individual of a piece of land, he is issued only with a Form 5A[114] denoting the official alienation subject to him paying a certain sum of fees within a stipulated period (of usually three months). There is absent from the Form any explanation regarding the due date of rent for the subsequent years, the penalty for late payment and the implication for defaults. If this is to be accepted as a flaw, then even when the land title is finally issued to the proprietor,[115] apart from specific details about the land and the amount of rent payable, there is nothing indicative of a rent reminder either. Proceeding from this, there is reasonable doubt that the land proprietor can be innocently ignorant of his basic obligations. To expect a proprietor to be aware of their rent obligation as stipulated in the *Code* and the *State Land Rules* is a bit far-fetched. A sensible arrangement would be for land offfices to provide a general note or a letter of advice to all proprietors reminding them of their obligations not only in respect of rent but also other related matters, as was previously done by the District of Rembau Land Office in 1988-1991.[116]

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113 Forfeiture can only be effected by a landlord if it is expressly provided in the contractual agreement with the tenant that (i) the landlord shall have such power of forfeiture or (ii) 'on condition that' or 'provided that' the tenant fulfilled all his undertakings, including payment of rent. To effect forfeiture for non-payment of rent, the landlord is required by law to serve on the tenant a 'formal demand' notice for rent. J.G. Riddall, *Introduction to Land Law*, London: Butterworths, 1988, pp. 89-81.

114 See Appendix 5.8.

115 See Appendix 5.9 for a sample of a grant of title in Form 5B.

116 In 1988 the Rembau Land Office took the initiative of issuing to all new land proprietors a two-page note which, apart from congratulating them for succesfully obtaining the pieces of land, also reminded and explained to them, in non-legal jargon, of their contractual obligations to (i) pay the rent (the date due, the late penalty, the forfeiture, etc.), (ii) protect their boundary marks, and (iii) commence cultivation or erection on the land as per the condition of alienation. The proprietors were asked to sign two copies of the note acknowleging its receipt and the explanation given them by the land office staff. A copy of the note was to be kept by the proprietor whereas another was retained

Secondly, the legal provisions in almost every step of the *Code* are very rigid the moment a Land Administrator commences recovery action. Upon the service of a demand notice in Form 6A, a defaulter is required by law to pay the whole sum due. There is no provision under the law which allows for partial payment by the defaulter and its acceptance by the land official, and the irretractability of the process of the demand notice leaves virtually no room for administrative discretion In fact, even an official acting in good faith, when accepting payment short of the total sum outstanding may find his action prejudiced against himself should the case ever end up in court, or he may even be surcharged and disciplined for flouting the set administrative procedures. Surely such rigid application of the law and the denial of an official's right to exercise positive discretion is against the spirit of compassion, fairness and indulgence to both the rent payers and to the officials dispensing their duties to the State.

Finally, forfeiture of land for non-payment of the annual rent or for breach of condition under the *Code* raises a contentious issue. Salleh Haji Buang, taking the case of the *United Malayan Banking Corporation v. Pemungut Hasil Tanah Kota Tinggi*[117] whilst not disputing the 'letter of the law' regretted that 'enforcement was not up to the mark' and that it should happen in the midst of more than a million acres of land which were lying idle.[118] Even though Salle Buang's judgment of the forfeiture comes from a different angle, it would not be out of place to reiterate the opinion of many among Land Administrators who viewed forfeiture with strong reservations. The senior and more experienced among them and those who are knowledgeable of the previous legislations were convinced that attachment of property and auctioning

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in the land office together with the proprietor's Registered Document of Title. Note: This is the only such case to the researcher's knowledge. True, critics may regard such a note as unnecessary and not legally mandatory. But, so is a reminder letter. On balance, however, taking the initiave to send a note earlier, at the instance of an alienation approval, is more constructive and pro-active than sending a reminder for rent payment, for the first move is more educative and preventive of defaults. As for the discontinuation of the practice, no explanation was available.

117 [1984] 2 MLJ 87. Refer Chapter Three of this study for a brief of the case.

118 Salleh Haji Buang, *Malaysian Torrens System*, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1989, pp. 316-317.

of land of a defaulter proves more effective compared to forfeiture under the *Code*. The basis for this argument is that forfeiture procedure is technically more cumbersome, time consuming and less effective 'on the ground.'[119]

Viewed as a whole, the justification for sale of land by auction or for forfeiture is morally questionable. Surely for W.H. Reid's adamant refusal to pay $2.00 additional fee to the Batang Padang Land Office in 1932 does not warrant the sale of his 450 acres of his land; yet even the King of the United Kingdom refused to intervene in Reid's appeal when intervention was more than justified. The same is also true in the case of the East Union (Malaya) Sdn. Berhad which had to lose 7,477 acres of its estate for the Company's technical failure to settle its RM115,625.00 rent a few days earlier. It is not the fault of the Court for handing out such heavy judgment. The Court's function is simply to intrepret the provision of the statute and to ensure the full compliance of both parties to a suit. It is the Legislature which is supposed to consider the burden on the parties affected of the implications of the law.

When he drafted the *Code* which replaces the *Cap. 138*, Blacker amended the provision for consequences for non-payment of rent. From attachment of property and sale of land by auction, he proposed forfeiture on the argument that since annual rent is a condition upon alienation of land, its non-payment amounted to a breach of condition requiring 'continuous performance' on the part of the proprietor. It follows that since forfeiture entails a breach of condition, such as in the case of non-cultivation of land, penalty for non-payment (which is a breach of continuous performance) of rent should also be forfeiture. As is also argued by Salleh Buang, under Islamic law too the State reserves the right to forfeit land, but the basis of such action is *maṣlaḥah ᶜāmmah* (public interest).[120] It implies that under no other circumstances is forfeiture of land justified in Islam

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119 Though theoretically effective on paper the land is reverted to State, in practice the forfeited land is still defiantly occupied and it is beyond the means of the State Authority to enforce the eviction.

120 Salleh Buang, *op. cit.*

In respect of the above, at least four inferences can be drawn from the incident of Caliph ʿUmar's forfeiture of Bilāl bin al-Ḥarîth al-Muzanî's land at al-ʿAqîq. Firstly, the forfeiture was for non-cultivation of land, not for non-payment of rent or *zakāt*. Despite it being alienated to him by the Prophet, following the Prophetic tradition that he who clears and revives dead land owns it,[121] the fact that Bilāl failed to cultivate the land nullifies his claim to its proprietary right and breaches the new policy of a three-year cultivation period set by Caliph ʿUmar. Seen in this context, continuous non-cultivation of the land is a threat to *maṣlaḥah ʿāmmah*, for if no action is taken, others might follow suit and abandon their lands, and the State would find it extremely difficult to enforce the cultivation condition. Furthermore, as later proven, failure to cultivate the land is tantamount to depriving the State of revenue which could be dispensed for public good.

Secondly, Bilāl was offered by Caliph ʿUmar the options of cultivating it or surrender. Probably realising his own limitations, Bilāl turned down the offer and chose surrender.[122] In other words, the proprietor was clearly made aware of State policy, fully understood its rationale and consented to its being implemented on him for the sake of public good. Thirdly, when minerals were extracted from the forfeited land after it had been developed by the State, Bilāl's family was paid the profit.[123] This clearly demonstrates the reciprocity between the State Authority and Bilāl. For his ready consent to the surrender, the State manifested its appreciation by sharing the profit.

Finally, the enforcement of forfeiture of Bilāl's land by Caliph ʿUmar is of significant relevance to the current issue of forfeiture under the *Code*. Few would imagine anybody would dare forfeit a land that had been disposed of by the Prophet to a companion. It would also be inconceivable to the general mind that when it came

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121 Qudāma bin Jaʿfar, *Kitāb al-Kharāj*, A. Ben Shemesh, (tr.), *Taxation in Islam*, vol. 2., Leiden: E.I.J. Brill, p. 31; Yaḥya bin Ādam, ibid., vol. 1, pp. 65-68; and Abū Yūsuf, ibid., vol 3, p. 120.

122 See p. 93 of this study.

123 *Ibid.*

to enforcing of the forfeiture of the companion's land it was a fellow companion, the Caliph, who held the responsibility of implementing it through. The fact that Bilāl's land was officially forfeited by Caliph ʿUmar proves beyond any doubt that when it comes to implementaton of the law everyone is treated equally and justly under Islamic law.

Given the historical evidences of 'heavy judgment' of forfeitures handed down by the Court on defaulters under the *Code* and that of al-ʿAqiq under Islamic law, it is presently inconceivable that whilst in certain cases the State Authority, representing the Legislature, upholds the law and concludes the forfeitures of land, in other instances, it tacitly condones the withdrawal or retraction of forfeiture proceedings.[124] Such inconsistencies neither serve the purpose of *maṣlaḥah ʿāmmah* nor uphold the principle of justice and fairness. The provision for forfeiture under the *Code* should therefore be reviewed with the options of:

(a) retaining it but in recognition of the severity of the consequences, it should only be effected on the proven basis that it is beyond doubt that persistent default with rent payment would be detrimental to public interest;

(b) partial forfeiture of the land, not its entirety;

(c) temporarily transferring proprietary rights of and interest in the land to the State Authority;

(d) abolishing it and substituting it with other forms of lighter but deterrent sentence such as,

  (i) attachment of property or crops to the equivalent of the defaulted amount and the costs of recovery plus a certain sum of penalty, as provided for under previous law; or

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124 See pp. 213-220 of Chapter Four in this study. G. Shabbir Cheema and S. Ahmad Hussein, 'Local Government Reform in Malaysia,' pp. 577-591, *Asian Survey*, Vol. 18, No. 6, June 1978, observed that of the four reasons identified as contributing to failure of local authority to increase their resource base, two are attributed to political interventions. One case involves political objections to tax increase whereas the other concerns the extreme difficulty of taking action against default on the payment of taxes 'because of pressure from local and state level politicians who do not want to alienate their constituents.'(p. 590).

(ii) deduction of the defaulter's pension, annuity, periodical payment or contract payment, as provided for under the law governing income taxes;

(iii) impoundment of the defaulter's passport and suspension of all his other business dealings; and

(iv) imprisonment; etc.

all with a view to either the default being remedied or the outstanding rent due fully recovered by the State Authority. Even when forfeiture is finally contemplated, mechanism for compensation to the defaulting proprietor ought to be seriously considered for the consequences of the capital loss of his land and the amount of efforts he had previously put in to secure the land and to develop it might imperil the proprietor's entire future.

Following al-Qurān's injunction for trustworthiness and fairness in dispensing juistice among man,[125] Caliph ᶜUmar's compassionate reminder to his collectors that tax-payers 'be not charged beyond their capacity and be not burdened beyond their ability'[126] ought to be taken as the guiding principles prior to the commencement of rent collection enforcement. Similar emphasis and approach was also adopted by Caliph ᶜAlī ibn Abī Ṭālib who, in his letter to Mālik al-Ashtar, his Governor in Egypt, counselled the latter to pay more attention to the cultivation of land rather than the collection of the *kharāj* taxes.[127] It is in respect of the need for land officials to fully understand circumstances facing landowners[128] that field collections have to be conducted regardless of the 'uneconomic returns' of the exercise, for it serves as an extension to the people. To further facilitate land proprietors fulfilling their rent obligation, land administration has to positively respond to their needs for more

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125 Al-Qurān 4:58.

126 Yaḥyā bin Ādam, *op. cit.*, p. 28 and pp. 61-62.

127 Ann K.S. Lambton, *Landlord and Peasant in Persia*, p. 16; Ziaul Haque, *op. cit.*, p. 40.

128 In order to be in line with the spirit of the *Sharīᶜah*, the scope for the application of rebates and remission of rent as provided for under the *Code* can be broadened to include cases of calamities, mishaps and other hardships which befall a landowner. At the moment the application is rather restricted though no specific circumstances are excluded from the possibility of such considerations.

flexible modes of payment.

As is reflected in the early history of public finance in Islam, the *kharāj* and the *ᶜushr* imposed on the different categories of lands complemented other sources of revenue for the State (such as *al-zakāt*, *al-ghanīmah*, *al-fay'* and *al-jizyah*). These sources of land revenue help defray the costs of government administration, civil service remuneration and military needs. In respect of increasing the capability of the State's finances, to ensure its stability and to enable it to effectively dispense its responsibility, Caliphs ᶜUmar al-Khaṭṭāb and ᶜUmar ᶜAbdul ᶜAzīz were reputed to have effected reforms through their innovative management of land resources during their respective caliphates.[129] Since State expenditure is fast growing out of proportion with its revenues, the proposed alternative for the State to shorten its revision interval from ten to five years and to change the mode of rent from a fixed rate to a fix percentage assessed in accordance with land value is appropriate; provided always that the proprietors are not unduly burdened beyond their capabilities and that the State Authority is receptive to the broadening of the applications of the provisions for remittance or remission of rents under the *Code*. The Australian idea of forcing 'contribution' from a proprietor for 'keeping land under-developed' is not at all a bad one. In fact, the Islamic precepts of 'cultivate or surrender' one's land placed within a grace period of three years as established during the Caliphate, ought also to be applied towards ensuring a proprietor's consistent payment of rent.

If the precepts were to be extended in the context of the *Code*, then prior to

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129 Yaḥyā bin Ādam, *Kitāb al-Kharāj*, A. Ben Shemesh, (tr.), *Taxation in Islam*, Vol. 1, Leiden: E.I. J. Brill, 1958, pp. 104-105. Under ᶜUmar I, conquered lands were not distributed among the military as was usually the practice during the time of the Prophet but was instead retained in the hands of the conquered cultivators who paid *kharāj* to the State treasury. ᶜUmar II, on the other hand, was attributed with the imposition *kharāj*, instead of *ᶜushr*, on *kharāj* lands purchased by Muslims, in addition to *zakāt* on their crops. The *kharāj* was imposed on Muslims who bought *kharāj* lands from non-Muslims despite the prohibition of such purchase since the time of ᶜUmar I. Another version emphasised that Umar II clearly directed that only *ᶜushr* was to be collected from Muslims cultivating kharāj lands. According to S.A.Q. Husaini, *Arab Administration*, Madras: 1948, p. 120, the imposition of *al-kharāj* instead of *al-ᶜushr* was effected against ᶜUmar II's order, for apart from also disapproving the practices of Mulims purchasing *kharāj* lands, ᶜUmar was also reported to have forfeited some of these lands, confiscated the purchase money and deposited them into the treasury, and returned the lands to their previous owners.

the confirmation of an alienation, a proprietor has to satisfy both conditions, to wit, to continuously cultivate his land and to regularly pay his rent, failing either of which his temporary alienation would be cancelled by the State Authority.[130] This arrangement, which is tantamount to a proprietor-designate being put on probation as a T.O.L. licence holder for at least three years may have the desired effect of educating proprietors and of ensuring their compliance with their proprietary obligations.

For as long as the public interest (*maṣlaḥah ᶜāmmah*) remains the overriding principle of man's socio-economic relations, the State Authority is at liberty to embark on whatever alternative courses would, to the best of its estimation, bear the most efficient results. The divesting of some of the State Authority's power and jurisdiction, and the contracting out of aspects of its administrative and economic functions to other parties, be it in the name of privatisation or corporatization is, a matter of historical fact, not an entirely new concept or practice. The farming out of tax collections, in its various forms, is known to have existed and to have been inheritedly practised in Muslim societies in the names of *qabālah* among the Arabs, *zamindari* and *taluqdari* in India, *iltizam* under the Ottomans, and *pajak*s later in the Malay States. The only reservation to these tax-farmings was the general concern that the system was prone to abuse[131] and instead of overseeing *maṣlaḥah ᶜāmmah* on behalf of the State, the tax-farmers unwittingly sowed the seeds of dissension which finally contributed to social disintegration, as was proven throughout later history.[132]

The moral responsibility remains upon the State Authority to guarantee that

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130 Under section 65 of the *Code*, the State Authority is empowered to issue licences for temporary occupation of land (T.O.L.) subject to the holder satisfying all conditions stipulated in the permit. Apart from the stipulation that the permit is subject to a yearly renewal, the holder is liable to a specific cultivation clause and to payment of the licence fee which is also revisable yearly.

131 The earliest objections came form notables among the Companions, namely Ibn ᶜAbbās, Ibn ᶜUmar and Saᶜid ibn Jubayr who held the opinion that the practice amounted to *ribā*. See Ziaul Haque, 'Metayage and Tax-Farming in Medieval Muslim Society,' Islamic Studies, Vol. 14, No. 3, Autumn, 1975.

132 Ziaul Haque, *ibid.*, 'Metayage and Tax-Farming...'

by the divestiture of its functions, the public not only deserves better service but also should not be unduly overburdened and inconvenienced. By way of current practices, the setting up of a regulatory body seems the logical follow up to overseeing the proper functioning of the newly instituted system. To ensure that public interest will always remain paramount, the terms of reference of the roles and functions of the regulatory body should be broadened and be conceptualised to operate as *al-ḥisbah*, the guardian of ethical behaviour and public morality.

As regards the proposed new constitutional formula for State revenue from land, two issues need to be addressed. First is the obvious fact that given the restricted jurisdiction over the 'less lucrative' sources of revenue under their list of competence, the individual states in the Federation are in desperate need for more income. In such an atmosphere of continuously depleting resources and being heavily dependent on the Federal Government, a possibly more fair option would be for the States to be allowed greater benefits from land, their constitutionally recognised source of income. It is grossly unfair for States to be expected to waive a considerable amount of their revenue from land premiums and rents by virtue of having to 'offer incentives' to prospective investors whereas, apart from that which they waived, there is nothing else they can expect to gain from the same source. Secondly, in the light of the proposed levy of 'land royalty' on bodies corporate, Ahmad Ibrahim's argument 'that Muslims who pay *zakāt* ought to be exempted from payment of land rent or other forms of land taxes,'[133] deserves further consideration and deliberation.

Land rent has always been an important source of revenue for any State. In an agricultural economy land rent provides the major source of revenue which helps defray administrative expenditure. The infra-structural development of the Straits Settlements and the Malay States owed a great debt to land rent and land-related economy. Other than tax-farms revenue, land rent provides the next major source of revenue. But as economic activities diversified, land rent revenue lost its significance

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133 Ahmad Ibrahim, 'Aspek-aspek Percanggahan Undang-undang Tanah Sekarang...', *op. cit.*, p. 11. As at present, Muslim land proprietors are double-taxed, having to pay theier land rent as well as *al-zakāt* on land as their property.

as the major contributor to state's finances.

Under Federation, land not only remains a source of revenue to the States but also supposedly symbolises the strength of their constitutional jurisdiction. The significance of this strength, however, is very disproportionate to the actual financial returns which States derive from land rent. Routine measures and inertia among land officials seem to suggest that the State Authority is contented with the means its land administration machinery have deployed to recover potential revenue. But the amount of accumulating debt demands more effective intervention by the State Authority to offset the situation. Otherwise, the strength of the State's jurisdiction over land matters will become a mockery of the constitution.

The *Code* has empowered the State Authority and its officials with all the necessary legal provisions. Forfeiture of land for default is indeed a drastic measure to be adopted. No doubt in many cases, forfeiture of land is not commensurate with the amount of rent in arrears. But for as long as the legal provisions governing default remain the same, Land Administrators are left without a choice. If lands have been auctioned or resumed by the State in the past for non-payment of rent, and for breach of cultivation condition, rightly there should not be any reason why land officials should be reluctant to commence forfeiture action. It has been quite obvious from this study that though a number among land officials do register reservation over the 'propriety' of forfeiture, yet their reluctance to commence action effecting it are, quite truthfully, due to 'cumbersome legal procedures' and 'highly politicised interventions' in administrative matters. So long as it is within their means, the individual Land Administrators need only to exercise their power, perform their duty and dispense their services with compassion, fairness and clear conscience.

To ensure lasting efficiency of its administration and the continued viability of land rent as a source of revenue for the State, the State Authority ought to consider various avenues ranging from strict enforcement of the law to restructuring its land administration machinery, and rethink the constitutional arrangements in search of other more meaningful alternatives.

CONCLUSION.

The main focus of this study has been land rent collection, its arrears recovery, and their implications to the financial health of the States within the Federation of Malaysia. In the process, various socio-legal and administrative issues were examined with regard to the technical and procedural aspects of rent collection and arrear recovery. This study confirms the steady decline at present of land rent as one of the main contributors to states' finances, and the phasing out into obscurity of the real strength and substance in State Authority's constitutional jurisdiction over land matters. In the face of consistently overgrowing budgetary commitments which are virtually out of control, this study leaves the impression of the States being forced by circumstances to live beyond their means.

The problems, however, are not of recent creation. They are the compounding issues of the past. Despite due recognition granted to the critical importance of land to national development, land administration has yet to fully recover from its lost position on the nation's top priority administrative agenda. Since the Emergency during British colonial days right to post independence until today, land administration is still saddled with arrears, lack of manpower and support services, and the threat of its system growing obsolete in the face of fast-changing technology.

With the exception of a handful of individuals whose personal dedication has had profound influence over the course of history of land legislation in the country,[1] the British administration's main concerns has been the generation of land revenue to help self-finance infra-structural development of the country, and the assurance of uninterrupted raw material supplies for the mother country, especially during the war years. This is evident from the fact that for more than a century, from early Penang to the federation of the four Malay States in 1896, the post of Chief Commissioner of Lands and Mines was never

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1 Foremost among them was William E. Maxwell whose outstanding contribution in the field of land administration deserves special mention.

given the due recognition it deserved as among the most important and senior in the administrative hierarchy,[2] shortage of staff in land offices were normal occurrences, and trained officials and surveyors were always hard to come by. In another dimension, despite the seemingly paternalistic outlook of the British towards the Malays, alienation policies were formulated to give European enterprises clear advantages over the rest.[3]

Unfortunately, despite vast improvements in other fields, post-independence land administration has still to cope with recurrent problems largely ignored in the past. Whilst land legislation is constantly updated to keep pace with the forces of change, land administration machinery as a whole is still ill-equipped and disproportionately staffed.[4] In its report in 1958, the *Commission on Land Administration* provided statistics of the number of arrears in land office work. Ten years later, Esman's *Study on Some Critical Areas* reinforced the same fact and with graphical flow-chart illustrations proved that the painstakingly slow administrative response by the land offices to many aspects of land applications (to take one aspect of land office work anly) was largely linked to four key

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2 Eventhough the post of Commissioner of Lands and Mines was recognised as senior to that of Chief of Police and Prison, the latter's post had always been considered 'more urgent,' and apart from the Resident-General, the Residents of Perak, Selangor, Negeri Sembilan and Pahang, the Judicial Commissioner, the Attorney-General and the Chief Auditor, even the posts of 'Commandant of [the] Sikh' and Chief Engineer were given precedence over that of Chief Commissioner of Lands and Mines. See *ANM/MISC. 8(1)*: 'Correspondence Respecting the Federation of the Protected Malay States, 1893-95,' para. 19.

3 See Philip Loh Fook Seng, *The Malay States 1877-1895: Political Change and Social Policy, Kuala Lumpur: 1969*; Emily Sadka, *The Protected Malay States 1874-1895*, Kuala Lumpur: 1968. To this were added the tainted reputations of a number of key British administrators for their direct involvements in land-jobbery and speculations, and the convictions of junior land officials for frauds and criminal breaches of trust. See also *CO/273/173*: Straits Settlements Despatch No. 13573 Confidential 1/6/1891: 'Certain Land Transactions Engaged in by Mr. Spence Moss in Selangor.'

4 Statements giving the impression that land administration manpower logistics remain 'the same for the last twenty years despite a ten-fold increase in workload,' such as those made by Haji Baderi, Yasin and Zaiton are commonly heard to be shared by others, for evidence on the grounds seems to support it. For example, in his 1971 study, J.H. Beaglehole, *The District: A Study in Decentralization in West Malaysia*, London: Oxford University Press, 1976, p. 20, provided the statistics of there being only four first division officers each in the District Office of Pasir Mas and Pasir Putih. As of July, 1994, the number is still the same, at least for Pasir Mas (based on a briefing paper, 'Pejabat Tanah dan Jajahan Pasir Mas: Kertas Taklimat Kepada Peserta-peserta Kursus Induksi Bil. 1 Tahun 1994,', Urusetia Taklimat, Pejabat Tanah dan Jajahan Pasir Mas). A Senior Assistant Land Administrator in a large disrict in Perak bemoaned the fact that despite a 'lengthy justification paper' submitted to the State Finance Office requesting the establishment of the post of another first division officer to help ease the burden of work, it was still refused, leaving the strength the same as that in 1973.

factors: shortage of manpower, [then] deplorable physical condition of the offices, work systems and procedures fast becoming obsolete, and highly centralised decision making process.[5] Report after report prepared by the Ministry of Lands betrays the same plight but with its critical degrees ever increasing. With reports of land offices being unable to cope with arrears of strata titles, Nik Abdul Rashid aptly pointed out 'that laws can easily be amended but implementing them would be a huge task,' for there are too many of those serving in the land offices who are 'inexperienced in land administration.'[6]

As far as arrears of land rent are concerned, it is discomforting to admit that they are largely due to land office failures. Often records are either missing, incomplete or out-of-date. In many instances, the computer systems installed and programmed to facilitate the updating of data and rent collection become part of the focal-point of the problems itself largely due to both software and hardware insufficiencies, untrained operators and weak supervision. Apart from the sending out of rent bills, there is general lack of communication between land offices and rent payers to the extent that many land offices consider field collections too onerous to undertake.

Many among the rent defaulters are totally ignorant of the law and are not aware of what is expected of them despite the fact that they are not new proprietors. Equally, many others defaulted because they waited for reminder letters from their respective land offices. Though in terms of their annual recurrence and its total amount, rent arrears are quite substantial and widespread, they are not a result of any collective behaviour or organised disobedience. There is not a single piece of evidence to suggest that by their persistent defaults they are defiant of authority or are resisting the Government. Even

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5 Esman candidly concluded that 'increased workload and political factors incapacitate administrtation [and] further neglect in this field could result in a situation totally out of control.' *Land Administration - Study on Some Critical Areas*, p. 3.

6 Nik Abdul Rashid Nik Abdul Majid, 'Undang-undang Tanah dan Implikasinya ke atas Dasar Tanah,' a paper presented at Seminar Tertinggi Pembangunan Tanah. Kuala Lumpur: The National Institute of Public Aministration, Malaysia, 1976. Two points need to be reinforced here. First is the fact that the *Code* was ably updated, and where necessary, subsidiary laws have been introduced. Secondly, one of the subsidiary land laws, the *Strata Titles Act, 1985 Act 318* was introduced about ten years ago. The irony of it is that whilst the Strata Titles Act was introduced to address current housing needs, it has added to the land office another source of arrears.

among those who are well-versed in land law and are fully aware of the consequences of their defaults, by the manner of their continuous apathy they are deliberately not attaching any priority to their rent obligations, and like others, they share the confident belief that the land office will not take any drastic action against them. Such is the 'confidence' that cross-sections of the public, ranging from ordinary landowners to managers and senior civil servants, have in land offices and their officials.

Despite its relatively low proportion to the total State revenue today, income from land rent still carries with it the aura of a State Authority's constitutional jurisdiction over land matters, albeit in a token fashion. Unless the State Authorities are truly conscious of their deep financial desperation and begin with utmost exigency concerted efforts to recover all outstanding sums due to them as well as exploring other potential avenues, the States in the long term may not survive as autonomous political entities. Given the ever stronger centralising tendency of the Federal Government, there is virtually no possibility for State Governments to be constitutionally assigned other significant sources of revenue. It makes it all the more urgent for the State Governments to come together and plead with the Federal Government for a reformulation of revenue or royalty from land.

The provisions of the *National Land Code* and the respective *State Land Rules* are more than sufficient to enable Land Administrators to fulfil their responsibility. In fact the *Code,* in particular, is so detailed that in many respects Land Administrators are put off from resorting to the necessary legal provisions for fear that should their action end in Court every single aspect of commission or omission of any of the legal provisions on their part will be closely scrutinised to their own embarrassment.[7] The law being as it is, its legal jargon and cross-references often bemuse Land Administrators, let alone others. And, as amplified in this study, an estimated total of 42 weeks[8] has to elapse to finally effect the forfeiture of a piece of land; and even at this length of period, it is assumed that there is no intervention, that the Land Administrator is granted the pleasure of total

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7 This was frankly admitted to by two State Directors of Lands and Mines in separate interviews with the researcher in August, 1994. As in both cases, they were referring to the postlude remarks by Judge Eusoffe Abdoolcader in Pow Hing & Anor v. Registrar of Titles, Malacca.

8 See Chart 3 in page 242.

freedom to exercise his judgment with efficiency, and that theoretically he has only resorted to actions which are purely legally mandatory. Based on interviews conducted, it is generally felt that the law will be more practicable by Land Administrators if its procedures and requirements can be simplified and the steps be shortened.

The *Code* represents the culmination of British-inspired land legislation in the Malay Peninsular. For a long time, early British legislation co-existed with Malay customary practices which are predominantly Islamic in influence. Other than some aspects of *farāiḍ*, major portions of Maxwell's treatise testified to the adoption in many Malay legal digests of the Islamic precepts on the creation of proprietary right to land. Deliberations in the digests of the principles regarding the revival of dead land, the mandatory grace period of three years, the obligation on continuous cultivation, the general rule on enclosure of land, on the right of a first settler and the punishment against trespassers, and other such precepts, are all clear reminiscence of Islamic land law. Despite alluding to the subject of payment of the tenth of land produce which is a direct reference to the *ʿushr* under the Islamic *zakāt*, the emphasis has always been more on the cultivation of land rather than the collection of its taxes. But when it comes to payment of land tax under the Colonial-inspired legislation, the Malays of Kelantan and Trengganu in particular took to arms. While they objected to the land tax, they were prepared to pay the *zakāt* as a fulfilment of their religious obligation.

As far as the current provisions under the *Code* relating to rent are concerned, there is on the whole, virtually none that is clearly contradictory to Islamic principles. In fact, numerous provisions of the *Code* are convergent with Islamic aspirations despite the absence of Islamic terminologies. Yet there are aspects of the law which need to be harmonised and further refined with administrative discretion if *maṣlaḥah ʿāmmah* is to be fulfilled. Such is the case with the provision for forfeiture for default of rent, the commencement of which should be tempered with mercy and with the clear certainty that services have amply been rendered, that opportunities have been provided and that the circumstances of the defaulting party have been fully investigated and that the consequential penalty is found to be justified beyond doubt. The State Authority's 'pre-

occupation' though, should always be more with seeking the ways and means to assist and enable land proprietors to realise the full potential of their land, for by doing so the possibility of the State recovering revenue will be greater. In like manner, the onus is on the State Authority, as the collective vicegerents of God on earth,[9] to ensure that its land disposal policy is just and fair to everybody such that land is alienated only to deserving individuals or bodies corporate in the hope that the property is fully utilised and not let to waste; and whenever punishment is meted out to the proprietors for their breach of trust, none among them should be indiscriminately treated nor favoured more equal than others.

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9 Land Administrators ought to directly apply religious injunctions in mutually reminding themselves and land proprietors of their ultimate accountability to God. As noted by the researcher, an example of this is the 'official' adoption by a number of revenue collecting agencies (such as the local authorities and the land offices) in the State of Kelantan of the Quranic verse 1:283, inferring therefrom the quotation that 'debt must be paid despite the absence of demand.' [The full translation of the verse is: 'If ye be on a journey and cannot find a scribe, then a pledge in hand (shall suffice). And if one of you entrusteth to another let him who is trusted deliver up that which is entrusted to him (according to the pact between them) and let him observe his duty to Allah. Allah is aware of what ye do.' (Marmaduke Pickthall, *The Meaning of the Glorious Koran*, London: George Allen & Unwin Ltd., 1952, pp. 63-64)]. Posters abound and signboards were erected at entrances of the relevant office carrying the quotion. Apart from that though, more aggressive measures are needed to bring the relevance of such injunctions into effect.

Appendix 1.1.

Office Holders of Penang 1786 - 1814.

Francis Light	- Superintendent 1786 to October 1794.
Thomas Pigou	- Assistant to Light and Magistrate of Penang; Assistant to Phillip Mannington in late 1794; Acting Superintendent before and immediately after Light's death; Temporarily succeeded Mannington in late 1795.
Phillip Mannington	- Magistrate of Penang and Superintendent, November 1794 to late 1795.
John Beanland	- Superintendent, January to May 1796.
Forbes MacDonald	- Superintendent, May 1796 to late 1799.
George Caunter	- Magistrate in Penang in 1796 and in 1800 to 1801; Acting Superintendent, September 1797 to late 1798 and in 1799.
Phillip Mannington	- Presumably son of the earlier Phillip Mannington, Second Assistant to MacDonald in 1796; Magistrate in 1797; Assistant Superintendent in 1800.
George Leith	- First Lieutnant Governor of Penang, April 1800 to January 1804.
John Dickens	- Judge and Magistrate of Penang 1800 - 1801.
W. E. Phillips	- Secretary to Lieutnant Governor Leith, 1800 to 1804; Acting Lieutenant Governor, December 1802 to May 1803.
Robert Farquhar	- Lieutenant Governor from January 1804 to 1805.
Phillip Dundas	- First Governor of Penang, 1805 to 1807.
Robert MacAlister	- Governor, 1807 to April 1809.
Bruce	- Governor in 1809.
Petrie	- Governor from 1809 to 1814.
Colonel Bannerman	- Governor from 1814.

Source: *ANM/SS MISC. X*: 'Cases Heard and Determined in Her Majesty's Supreme Court of the S.S. 1808-1884 by James W. N. Kyshe, Acting Registrar of the Said Court in Malacca.'

Appendix 1.2.

Cutting Paper.

"This is to certify, that _____ has permission to clear Ground to the extent of _____
Orlongs, in the District of _____
but should Government ever find it expedient to resume this Ground, the Proprietor will be paid no more than the expense he may have incurred in clearing the Ground, viz. 5 Dollars per Orlong, and further this Ground must be cleared within twelve months from the date thereof."

By Order of the Superintendent

(Signed) PHILIP MANNINGTON,

____ December, 1797. Second Assistant.

Source: *ANM/MISC. 19*: 'Minutes of the Landed Tenures of the Prince of Wales Island, 15 August 1823.'

Notes:

1. The first cutting paper found entered in the Collector's Register was dated 22nd December 1797. By 1823, a total of about 9,942 orlongs of land had been issued with this title. Inspite of the looseness of the above, cutting papers issued for lands in the Province Wellesley and the West District were much more loose.
2. Despite the presence of the provision, there seem to have been no instances of land resumed by the Government.

Appendix 1.3.

Measurement Paper.

"In the year Waw, the twentieth day of Mohrum, this day Wednesday. Be it known, that Abdul Latiff, Land Measurer, hath measured a piece of Ground belonging to Juan Augustin, and which measures on the East thirty seven Jumbas, which is one Orlong and seventeen Jumbas; on the West one Orlong and fourteen Jumbas; on the North one Orlong and four Jumbas; and on the South one Orlong and four Jumbas; estimated to contain two Orlongs and two Jumbas and the boundaries of which ground, are East, by Captain Scott's Ground, West, by the Great Road; North, by Mr Laton's Ground, and South, also by Captain Scott's Ground, situated near the Salt Marsh, in the District of Tanjung Penaigre. This Ground was formerly Captain Scott's and given away by him, for which this measuring Paper is made to remain with Juan Augustin, that no misunderstanding take place hereafter."

(signed) ABDUL LATIFF.

Source: *ANM/MISC. 19*: 'Minutes of the Landed Tenures of the Prince of Wales Island,15 August 1823.'

Note: The first Measurement Paper found in the Collector's Register was dated during Mr Pigou's administration in 1795 even though Mr Mac Donald's records showed that they were abudantly issued during Mr Light's time. By 1823 about 5,309 *orlongs* of land were held under this title.

Appendix 1.4.

Birch's Notice.

No. LXIV

Notice Regarding Waste Lands.

Uncultivated Lands within the State of Perak will be granted for agricultural purposes on the following terms:-

I. A Permit (Form XXI) will be granted to all applicants, authorising them to clear and cultivate lands free of rent or other charge for a period of three years from the date of the permit.

II. A fee will be paid for this permit proportioned to the area required, thus -

Under 20 Acres	.....	$0.50
Over 20 and under 50	.....	1.00
Over 50 " " 100	.....	2.00
Over 100 " " 500	.....	5.00
Over 500 " " 1,000	.....	10.00
Over 1,000	.....	25.00

III. At the expiration of three years, the permit holders will have the option of purchasing in Fee Simple the land cleared by them during those years at the rate of $1 per acre.

IV. In the event of the permit holders not purchasing the lands cleared within three months after the expiry of the license, lands will revert to the State.

V. All Titles to lands will be given on condition that any portion of the lands respectively comprised in them may be resumed by the State if required for public purposes, on payment of a fair price for the land so resumed.

VI. The Export duty on the produce derived from lands granted under these provisions shall not exceed 2 1/2 percent ad valorem and shall not be enforced until after three years from the date of the issue of the Permit.

VII. These rules will not apply to lands in the immediate vicinity of towns, and villages, or tracts of land along rivers, or public roads, with regard to which special arrangements must be made.

Land for Mining Purposes.

VIII. Leases of land for mining purposes will be given on the payment when exported of $15 a bhara of tin, and one-tenth of the produce of any other metal, a clause being added, that the mine shall be worked within one year of the issue of the lease, and that if left unworked for one year, the mine and land shall revert to the State.

By Command of His Excellency
the Governor of the Straits Settlements,

BRITISH RESIDENCY,
Perak, 2nd October, 1875.

J. W. W. BIRCH,
Queen's Commissioner.

Source: *CO/273/86.*

Appendix 1.5.

Bundi Concession, 3 September 1889.

This is a document showing clearly and truthfully an Agreement, duly sealed, made in the State of Tringanu at seven o'clock on Monday the 7th day of Moharam in the year of the Hegeira 1307 with truth and certainty this document of agreement is made between us His Highness Sultan Zeinal Abidin (son of the late Sultan Ahmad) ruler of the State of Tringanu and all its provinces, districts, dependencies and territories, after consultation duly concluded with the chiefs and officials of the Country, on our side for ourself our heirs and successors or our executors and administrators of our first part and Chia Ah Cham his heirs successors and assigns executors and administrators of the second part. And we two parties irretrievably and mutually agree to what is set forth in the four articles written here below viz:-

Article first. For our side Sultan Zeinal Abidin for ourself our heirs and successors or our executors and administrators concede and grant unto Chia Ah Cham his heirs successors and assigns, executors and administrators, for mining, the lands which in the district of Kemaman are known as Tanah Bandi and Bukit Bandi and all places for mining therein which may contain tin, gold, silver, coal or any mineral whatsoever in that place. The boundaries of the lands of Bandi and Bukit Bandi abovenamed are on the up country or up river side, Sunghie (i.e. the river) Chendrong passing thence on into (the river) Sunghie Burong and continuing or following on until reaching Bukit (hill) Bandi on the seaward or down river side the boundary is by following down stream the water of the (river) Sunghie Charol to Palox Jinnang and thence back on land across again to Bukit Bandi so as to entirely finish and include it. NOW whatever it pleases Chia Ah Cham according to his thinking, his heirs, successors and assigns executors and administrators to do which will produce revenue to the country, and which will give proffit he can with full power do in and upon the abovementioned land. Notwithstanding this if Chia Ah Cham his heirs successors and assigns executors and administrators shall not commence work in fair manner within 5 years then this document of agreement shall be broken and the lands abovementioned and also this document of agreement shall be returned to us or to our heirs or successors, and shall be released from the possession of the said Chia Ah Cham his heirs successors and assigns executors and administrators. But if Chia Ah Cham his heirs successors assigns executors and administrators does work as stated herein upon the said land verily and in truth we acknowledge for ourself our heirs and successors that we have for certain given and handed over unto Chia Ah Cham his heirs successors and assigns executors and administrators the said mining land of Bandi together with the hills thereof, as stated for the term of (60) years from the date of our sealing this document. And we Sultan Zeinal Abidin agree that in or upon the abovenamed lands no one other person can work for gold, silver, tin ore or other ores or precious stones such as diamonds, emerald, rubies, anything whatsoever; that is to say that only Chia Ah Cham his heirs successors and assigns executorsa and administrators can work there. Nevertheless Chia Ah Cham must in working bring in a fair number of men and moreover he must not stop any of the work that brings forth income and if Chia Ah Cham works in that place in a playing sort of way such as bring [*sic*] in only 20 or 30 coolies or ceases

to work, it will be in our power to take back the place named.

Article Second. Chia Ah Cham, his heirs successors and assigns executors and administrators had concurred in and accepted what has been set forth in Article the first. And he accepts from Sultan Zeinal Abidin the concession of the lands for mining and planting on the terms set above and undertakes to pay the Royalty or duty and that the same should be paid willingly when due to the royalty or duty agreed to be paid being on Tin, one pikul out of every ten pikuls and as regards gold, silver, coal or any other kinds of minerals and precious stones, such as diamonds, emeralds, rubies or anything else which Chia Ah Cham takes from or finds upon or in the said land of all these, if ten be found one of them that is in kind, is to be for royalty or duty to Sultan Zeinal Abidin, or upon valuation of the price thereof one tenth shall be paid as Royalty or duty but not more. And Chia Ah Cham regularly once every five months will without fail pay the duty or Royalty abovenamed.

Article Third. And we Sultan Zeinal Abidin for ourself our heirs successors &c grant unto Chia Ah Cham his heirs successors assigns executors and administrators full power and right to gather and collect people on the lands abovenamed and to build houses, sheds and buildings or any places they may choose within the said boundaries only not do so on places that may be occupied by people already there; and they may also make roads from place to places other than through the places of people already there and Chia Ah Cham can use timber and stone of any use for his work, and he can also use the rivers for any purpose in his work in the said places and he can put up pumps or engines or machinery so as to make the work of mining easy and not troublesome and they can make mines under ground and upon the ground and can dig into or excavate the hills, and can crush rocks or stones and can take up from the rivers all stream tin which is in the rivers. And moreover on all tools or implements or materials for buildiings or machinery or men employed by them or on coolies brought by them into these lands there shall be no duty or tax. And when the Royalty or duty on any gold, silver, tin, coal or minerals or any precious stones such as diamonds, emeralds or rubies has been paid Chia Ah Cham is guaranteed that the same can be exported.

UPON opium duty must be paid to us or heirs successors &c at the rate of $120 per chest of opium. The two items spirit and gambling belong to the state. We give the said Chia Ah Cham the right to take into these places European labourers or workmen, or Malays or Chinese or Klings or Siamese, and Chia Ah Cham can put in any person or persons of any other nationality to work there. And Chia Ah Cham can enter into partnership or working with any persons.

Article Fourth. Chia Ah Cham his heirs successors assigns executors and administrators shall not sell the ground comprised in the said Bandi or Bukit Bandi Concession; (i.e. outright or in perpetuity being only a lease for a specified term) and Chia Ah Cham undertakes to pay the duty upon opium imported at the rate of $120 per chest of opium and as to the matters of gambling, and spirits and Chinese and Java tobaccos and other goods impoirted Chia Ah Cham will follow the customary law of the Country of Tringanu. As regards currency or coin used for paying expenses of work upon the said concession, Chia Ah Cham must not use the currency or coin of other countries but must

use the coin or currency of the State of Tringanu. In case of any disputes arising between the servants or coolies upon the said concession and the people of the Country on the said concession, Chia Ah Cham agreed to submit such disputes to the decision of Sultan Zeinal Abidin, and Chia Ah Cham for himself his heirs successors, and assigns, executors and administrators agrees to give effect and observance to the stipulations set forth in the foregoing four articles and will not depart in any way from any of them. And we Sultan Zeinal Abidin for ourself our heirs successors &c. also in the same way cannot depart in any way from giving effect and observance to the agreements on our opart set forth in the foregoing four Articles and therefore, and now we have impressed our seal hereupon, and Chia Ah Cham has put his signature hereupon as guarantees to both parties to this agreement and this has been done in truth and openly and clearly before all the Chiefs and Officials of the Country.

Signed by (sd) Chia Ah Cham

Witnesses

Syed Hassan bin Ahmad
Mohamed Yusop bin Tunkoo Mahamood.

TRANSLATION

of a document in Malay (Arabic) Character from the Sultan of Tringanu, granting to Chia Ah Cham mining rights in the district of Sunghie Bandi, Kamaman in the State of Tringanu.

Source: Shaharil Talib, *After Its own Image: The Trengganu Experience 1881-1941*, London: Oxford University Press, 1984, pp. 241-243.

Appendix 1.6.

Pajak Kechil, Kuala Trengganu, 23 February 1907.

Seal of Tungku Besar
bin Sultan Mahmud.

The document was made in Trengganu on the tenth day of Muharam, 1325. (23 February 1907).

I, Tungku Besar bin Almerhum Sultan Mahmud Muthafar Shah, with my wife Tungku Long binte Almerhum Sultan Ahmad, have given to Tuan Indut bin Tuan Muda and his heirs, the export duty farm at the Kuala on the articles set out below, for six years; from 10 Rejab 1325 (19 August 1907) for 6 complete years.

Tuan Indut and his heirs undertake to pay me and my wife and heirs, $1,500 per annum, that is atotal of $9,000 for six years.

The dutiable articles are:

		$ c
Pinang rachik	per pikul	1 00
Pinang kusi lepong	" "	- 50
Pinang kusi benar	" "	- 25
Pinang merah	per 10,000	- 50
Tin	per pikul	- 50
Tin ore	" "	- 25
Red rubber	" "	2 00
All other rubber	" "	1 00
Black pepper	" "	- 50
Hides	" "	- 50

Tuan Indut has paid me and my wife $1,000 of the payment aforesaid: the balance must be paid to me and my wife, when Tuan Indut takes possession of the farm, by monthly payments of $100, until the $9,000 has been paid in full.

Whoever, (if anyone), evades payment of the above duties, commits an offence, in the fullest sense, against us.

To make this valid and clear the seal of my name is put at the head of this document.

Source: Shaharil Talib, *After Its own Image: The Trengganu Experience 1881-1941*, London: Oxford University Press, 1984, p. 236.

Appendix 1.7.

Samples of Surat Sungai.

Sample A:
Source: S.K.M.K. - 1 No.1

Tarikh kepada 1265 dan kepada duapuluh enam 26 [*sic*] hari bulan Ramadan hari Khamis jam pukul lapan delapan [*sic*] siang dan kepada masa ketika itulah kita Ungku Temenggung Serimaharaja memberi surat tanda keterangan kepada orang Cina yang hendak berkebun dalam tanah Johor, Sungai Sekudai.

Iaitu nama China Lau Lib Keng orangnya 25 orang banyaknya. Dan perjanjian China itu dengan Ungku Temenggung: tiga bulan lamanya tiada diambil dia punya cukai lepas daripada tiga tahun tiada boleh tiada China itu mesti bayar bagaimana adat yang di dalam Singapura yang dibuat oleh Kampeni begitulah yang diturut oleh Ungku Temengong kepada segala orang China yang berkebun dalam tanah Johor adanya.

Sample B:
Source: S.K.M.K. - 1 No. 38.

Johor, Iskandar Puri, kapada 20hb. Muharram 1280.

Bahawa ini keterangan dari bawah kuasa Yang Maha Mulia Ungku Temenggung Abu Bakar Serimaharaja, Raja Johor kepada orang China yang hendak berkebun di dalam tanah Johor. Namanya Goo Loon Hee. Ada pun kedudukan kebun-kebun ini di Sungai Santi, Pengerang, iaitu sebelah kiri mudik Sungai Santi dan sempadannya dari tepi laut dan ke hulunya melalui Sungai Baur iaitu pada dalam sempadan hingga sebelah kiri Sungai Jelutung adanya.

Dan Goo Loon Hee hendaklah membayar cukai kepada Beta bagaimana adat yang Beta aturkan di dalam tanah Johor. Begitu mesti ia menurut dan membayar.

Sungguh dengan nyatanya serta adalah cap Beta termetri di atas shatar ini adanya.

(tanda tangan)
Wan Abdul Rahman ibni
Al-Marhum Ungku Temenggong
Ibrahim Serimaharaja Johor.

Sample C:
Source: S.K.M.K. No. 13

Diperbuat dalam Johor Baharu kapada 16 Dzul'hijjah 1299.

Bahawa ini keterangan dari ke bawah Duli Yang Maha Mulia Maharaja Johor yang memiliki kerajaan Johor serta daerah takluknya.

Dikurniakan kepada Lim Hock See, Lim Tong Hock dan Ungku Abdul Majid mereka yang tersebut ini berkongsi masing-masing dengan bahagiannya seperti yang akan tersebut dalam surat ini. Maka dibenarkan kongsi yang tersebut ini memukul hutan dan membuat 100 kebun gambir dan lada hitam alam perentah Johor Sungai Bukit Serampang ke hulunya iaitu dalam Muar kiri mudik yang bukan sempadan orang lain.

Maka hendaklah kongsi ini serta orang yang dalam Bukit Serampang yang tersebut ini menurut segala hukum dan adat kita yang telah lalu dan akan datang atau keturunan warith ganti kita dan hendaklah kongsi yang tersebut ini membayar cukai kepada kita atau keturunan warith ganti kita menurut adat bayaran yang dipakai dalam perentah Johor.

Dan dari mana tahun dalam sempadan kongsi yang tersebut ini tiada dipukulnya membuat kebun gambir dan lada hitam setahun lamanya bolehlah kita membenarkan orang lain membuat kebun di situ tiadalah dapat kongsi yang tersebut ini menahan atau melarangnya.

Sebagai lagi larangan kita ke atas kongsi yang tersebut ini tiada boleh ia menungangkan [sic] segala kayu yang berguna seperti tempinas, balau, keranji, daru-daru, keruing, dan sebagainya melainkan jika sangat menyusahkan atas kebunnya.

Dan lagi apakala mati salah seorang yang tersebut dalam kongsi ini atau hendak berjual bahagiannya atau hendak menambah rakan atau menyerahkan kepada orang lain dapat tidak hendaklah ia memberitahu kita dengan sebenar-benarnya atau warith ganti kita.

Sebagai lagi segala kawasan atau sempadan atau tanaman atau kampung halaman atau ladang dan sawah orang Melayu yang telah sedia diam dalam kawasan yang dibenarkan kepada kongsi yang tersebut ini atau pencarian mereka seperti gaharu, getah, kayu minyak keruing, damar baru dan lainnya bagaimana kebiasaan mereka itu masuk keluar tiadalah boleh kongsi ini melarang atau menyakitkan atau merosakkan atau campur mulut sekali.

Adapun keadaan kongsi ini sebelas bahagian iaitu:

Lim Hock See ..... 8 bahagian
Lim Tong Hock ..... 2 bahagian
Ungku Abdul Majid ..... 1 bahagian

Sungguh dengan nyatanya adalah dimetrikan cap kita di atas shatar ini adanya.

Kerana Yang Maha Mulia Maharaja Johor

(tanda tangan)
Abdul Majid bin Ibrahim.

Source: Caroline Wong May Leng, *Sistem Kangcu di Johor 1844-1917*, Persatuan Muzium Malaysia, Kuala Lumpur, 1992, pp. 69-70 who acknowledges original sources from the Arkib Negara Malaysia.

Appendix 1.8.

Sample of Surat Tauliah.

Be it known to all men.

By order of H.H. The Sultan of the State and territory of Johore .....
is appointed to be Kangchu over all his people in .....
Be it known to you that [?] have been made Kangchu. Wherefor you are required to adhere to and conserve the orders in the following clauses.

FIRSTLY - You are required to comply with all our instructions, orders and laws both those now and in force and those which may hereafter be issued - to carry them out yourself, to see that others carry them out and to enforce them - Fail not in this.

SECONDLY - You are required to avoid and prevent any matters we may prohibit and to enforce such porhibition.

THIRDLY - You are required to safeguard all your people, Our subjects, and instruct them correctly so that they may work to their own profit and the advantage of their cultivation of pepper and gambier - and made yourself acquainted with all matters concerning that cultivation.

FOURTHLY - You are required to promote settlement in and development of your area and to arrange and settle the affairs of every one according to the authority you hold with justice and equity.

FIFTHLY - Whenever you may receive our order to appear before us, you shall come forthwith.

SIXTHLY - You are required to assist the Police and other Officials and to give effcet to the orders of Our Government officials whenever they are in difficulties or require your assistance.

SEVENTHLY - You are required to assist to the utmost of your power anyone suffering oppression.

EIGHTLY - You and your people are required to arrest and hand over (to) the Police in Johore any escaped convicts.

NINTHLY - Be it known to Kangchus and to whoever who has shares in this river and to others that this "Kangchu Authority" may not be sold, or mortgaged or charged for debt - Such action will be absolutely invalid.

TENTHLY - The Kangchu may not delegate his power to anyone even a partner and much less to anyone else to act as a Kangchu unless with the approval of Government

for the Government will take cognisance only of those whose names are in the register as Kangchu and look to them.

ELEVENTHLY - You are here reminded regarding opium and spirits in your river that you may not allow the supply to fail. The Government require you to daily maintain such supplies of those commodities as may be sufficient for the use of the agricultural labourers in your river and those from time to time living in the Kangkar.

In case of any failure of supplies the blame will rest with you.

TWELFTHLY - In case of the death or departure (of the Kangchu) and whenever it may be desired to ask for a change of the Kangchu who has been given this authority in his name. it is requisite that this authority be returned to a Government Official in order that it may be exchanged for another.

THIRTEENTHLY - It is requisite that the Kangchu shall acquire and ascertain and record in a proper register all happenings and events and the number of plantations on the river in his area and the number of men on them in order to be able to render the information whenever the Government may require it.

FOURTEENTHLY - The Kangchu must always inspect the plantations and give orders to have them weeded and inform each Mortgagee in order that he may provide money to weed the mortgaged plantation. Do not be lax in this matter. If the weeding is delayed by owner's labourers and there is delay in the supply of money for weeding by the mortgagee, the Kngchu himself shall pay men, to do the weeding and call on the owner of the plantation to refund him such money from such plantation so much as may amount to the sum expended on the weeding and notify the mortgagee in writing of the matter.

FIFTEENTHLY - Receive and keep for yourself such profits as we have granted you all and divide them fairly amongst all who are partners.

SIXTEENTHLY - Those who do well will receive reward and those who do wrong will be held responsible for their faults and will receive punishment.

SEVENTEENTHLY - Be it known to you and to all men, no one may be called Kangchu unless he has been granted by us a letter so entitling him, in this form

It is not incumbent on Us to retain anyone in his position who acts contrary to Our orders. This must be remembered.

May the Lord of All The Universe assist you.

Granted in ..... on ..... day ..... 18.. .

Source: Coope, A.E., 'The Kangchu System in Johore,' *JMBRAS*, Vol. 14, Part 3 (1936), pp. 249-251.

Appendix 1.9.

Total Planted Area of Rubber in Malaya on Estates of 100 Acres and Over Shewing Nationality of Ownership in Each State.

State or Settlement	European	Chinese	Indian	Others	Total
	in acres				
The Federated Malay States:					
Perak	238,372	21,056	11,692	2,900	274,020
Selangor	306,052	26,641	6,062	3,723	342,478
Negri Sembilan	227,683	30,497	6,014	7,005	274,199
Pahang	40,904	22,388	3,598	--	66,890
Total FMS	813,011	100,582	30,366	13,628	957,587
Straits Settlements:					
Province Wellesley	36,735	8,218	155	--	45,068
Dindings	5,483	1,717	278	250	7,728
Malacca	86,480	29,719	9,539	1,153	126,891
Penang Island	742	805	80	--	1,627
Singapore Island	13,101	13,635	996	2,621	30,353
Total SS	142,541	54,094	11,008	4,024	211,667
Unfederated Malay States:					
Johore	253,506	145,477	14,390	55,667	469,040
Kedah	152,125	54,069	5,885	1,697	213,776
Perlis	---	100	1,420	---	1,520
Kelantan	28,037	2,620	---	1,824	32,481
Trengganu	4,817	---	---	---	4,817
Total UFMS	438,485	202,266	21,695	59,188	721,634
Total		356,942	63,069	76,840	---
Malaya	1,394,037	496,851			1,890,888

Source: *ANM/P/Tani9*: 'Department of Agriculture Straits Settlements and Federated Malay States Malayan Agricultural Stastistics, 1933-34.'

Appendix 2.1.

COURT OF JUDICATURE OF PRINCE OF WALES ISLAND, SINGAPORE AND MALACCA.

Malacca, the 7th day of March, 1829.

Before Sir JOHN THOMAS CLERIDGE, Recorder, and SAMUEL GARLING, Esquire, Resident Councillor.

ABDULLATIF *v.* MAHOMED MEERA LEBE.

Action to recover possession of a certain piece or parcel of land.

After hearing the evidence of both parties, plaintiff *Nonsuited with Costs.*

N.B. - In this case it was proved that in the territories of Malacca the owners of the soil and the cultivators of it are entirely distinct persons, except in, and in the immediate vicinity of the Town.

That the owner of the soil cannot eject the cultivator as long as he continues to pay him a certain portion of the produce - generally one-tenth.

That the owner of the soil may sell, or otherwise dispose of his interests, without prejudice to the cultivator, and the cultivator *vice versa.*

That in case the cultivator allows the land to lie waste, the owner of the soil may eject him by due process of law.

That the fact of lands lying uncultivated for perios, is evidence of waste.

That the period for paddy is .... 3 years.
Cocoa-nut trees and other fruit-trees is .... 3 years.
Gambier, ... 1 year.
Pepper, ... 1 year.

Source: W.E. Maxwell, 'The Law and Customs of the Malays With Reference to the Tenure of Land,' *JSBRAS*, No. 13, June 1884, pp. 204-205. Enclosed as Appendix III with a note 'Extracted from the Civil Court Book for Malacca, Vol. 1.'

Appendix 2.2.

SUPREME COURT,
MALACCA.

Before Sir P. BENSON MAXWELL, C.J.

March 17, 1780.

SAHRIP v. MITCHELL AND ENDAIN.

Trespass. Meaning of the expression "hold by presription" used in sec. 12 of Indian Act 16 of 1839, with respect to lands in Malacca.

(excerpts)

"Prescription," properly so called, is personal; it is the title acquired by long usage by a particular person and his ancestors, or the preceding owners of the estates in respect of which the right is so acquired. A "custom" is also established by long usage, but unlike prescription it is "local" not personal; when once established, it becomes the law of the place where it prevails, to the exclusion of the ordinary law; and those who have a right under it, have it, not because they and their ancestors or predecessors have long enjoyed it, as is the case of prescription, but simply because the custom of local law gives it to them, without any reference to the length of their enjoyment. In the case of prescription, long usage gives title to an individual; in the case of custom long usage establishes the custom; and it is the custom, become law, which gives title to a class of persons in a locality, and gives it to them at once. The two things are essentially different, but there is a sufficient similarity or analogy between them - usage being an element common to both - to account for their being occasionally confounded; and I think it plain, from the history of the land tenure of Malacca, that it was in the sense of "custom" that the term "prescription" was used in the Act of 1839.

It is well known that by the old Malay law or custom of Malacca, while the Sovereign was the owner of the soil, every man had nevertheless the right to clear and occupy all forest and waste land, subject to the payment, to the Sovereign, of one-tenth of the produce of the land so taken. The trees which he planted, the houses which he built, and the remaining nine-tenths of the produce, were his property, which he could sell, or mortgage or hand down to his children. If he abandoned the paddy land or fruit trees for three years, or his gambier and pepper plantations for a year, his rights ceased, and all reverted to the Sovereign. If without deserting the land, he left it uncultivated longer than was usual or necessary, he was liable to ejectment...It is clear that rights thus acquired are not prescriptive, in the technical sense of the term, but customary. They are required as soon as the land is occupied and reclaimed, and the title requires no lapse of time to

perfect it.

It is contended by the Solicitor-General that such a custom was unreasonable and therefore invalid; but if such an objection could now be raised after its long recognition, as I shall presently show, I should not hesitate to hold that the custom was not only reasonable, but very well suited to any country like this, where the population is thin and the uncleared land is superabundant and of no value...But it is too late to question its reasonableness, after a long and continuous recognition, amounting virtually to an offer of forest land to all who chose to clear it, on the terms of the custom.

The Portuguese, while they held Malacca, and, after them, the Dutch, left the Malay custom *lex non scripta* in force.

.....

Judgment for the plaintiff for 300 dollars.

Source: W.E. Maxwell, 'The Law and Customs of the Malays With Reference to the Tenure of Land,' *JSBRAS*, No. 13, June 1884, pp. 205-211. Also enclosed as Appendix III.

Appendix 3.1.

No.(4) in D.O.B.99/54.

LAND ENACTMENT, 1938.
|Section 192 (i)|

Presentation No. 144/55
Misc. Doc: No. 75/55.

ORDER OF ANNULMENT OF REVERSION.

Whereas the land held under E.M.R. No. 2030 for Lot No. 2063 Mukim Pauh Sembilan Daerah Mentuan District of Bachok which was registered in the name of Munah binti Awang (deceased) (hereinafter referred to as "The Proprietor") was sold by public auction on 3rd day of December, 1953 for recovery of arrears of land rent / revenue and there being no bidder, reverted to State.

And whereas Salleh bin Awang (purchaser) has applied to me for annulment of the reversion on the ground of excessive hardship, to wit loss of sources of living.

And whereas it has been proved toi my satisfaction that Salleh bin Awang (purchaser) will suffer excessive hardship by reason of such reversion.

Now, therefore, I, Adviser, Lands and Mines, Kelantan acting under the powers conferred upon me by Secction 192(i) of the Land Enactment, do hereby order that the said reversion be annulled on the following terms:-

	$ cents
Payment of arrears of rent due - -	.40
Notice Fee - -	1.00
Fine under Section 177 (ii) - -	1.00
Payment of rent due for the current year - -	.40
Costs / Penalty **Twenty times the quit rent** -	8.00
Total	$10.80

Dated this 6th day of Dec. 1954.

M.C.S.
signed
ADVISER, LANDS & MINES,
KELANTAN

Memorial make on the title in volume_____of the_____this 6th day of February, 1955.

Source: *ANM/DO Bachok 99/54/2.*

Appendix 3.2.

National Land Code

Form 6 A
(Sections 97 and 98)

NOTICE OF DEMAND: ARREARS OF RENT

To.....
of.....
proprietor of the land/s described in the 1st and 2nd columns of the Schedule below.

Whereas the rent reserved on the said land/s and due in respect of the current year is unpaid and, with effect from the 1st day of June, in arrear.

You are hereby required, within one month of the date of the service of this notice, to pay *at the Land Office of this district/at..... all the sums now due as e ntered in the 3rd-6th columns of the Schedule and totalled in the final column thereof.

And take notice that, if *the total/any of the totals specified in the final column is not paid in full within the said period of three months, then I the undersigned, by virtue of the powers conferred by section 100 of the National Land Code, shall by order declare *the land/the lands in question forfeit to the State Authority.

Dated.....day of.....19.....

Land Administrator.....

District.....

SCHEDULE OF LAND AND ARREARS

Description & No. of Title	*Lot/L.O. No.	Current Year's Rent	Arrears from previous years	Fees, etc., Chargeable as rent	Arrears Fee/s	Total due
(1)	(2)	(3)	(4)	(5)	(6)	(7)

SUPPLEMENT

To.....
of.....
*Chargee/Lessee/Sub-lessee/Tenant/Lien-holder/Caveator/Easement-holder.

Should you have reason to believe that the proprietor of that land scheduled above in which you possess or claim an interest will make default in payment of the sums now declared due thereon, you may avoid the forfeiture of such land by paying in full to the Land Administrator within the time specified, the total specified in respect of that land.

And take notice that (without prejudice to any right under that section to sue the proprietor direct) the following special rights of recovery exist by virtue of the provisions of section 98 of the National Land Code -

(a) any sum paid by a chargee shall be added to the first payment thereafter due under the charge;

(b) any sum paid by a lessee, sub-lessee or tenant may be recovered by deducting the amount of such sum from any rent then or thereafter due from him to the proprietor or other person under whom the land is held;

(c) any lessee, sun-lessee or tenant who incurs any additional liability or suffers any deduction under that section may recover the amount of such liability or deduction by making a corresponding deduction from the amount of the rent payable by him.

Dated this.....day of .....19.....

Land Administrator.....

District.....

*Delete as appropriate.

Source: *National Land Code*.

Appendix 3.3.

National Land Code

Form 8 A

(Section 130)

NOTICE OF REVERSION TO THE STATE

Whereas, pursuant to the provisions of section *100/129 of the National Land Code, the land scheduled below has by order been declared forfeit to the State Authority.

Notice is hereby given that such forfeiture has this day taken effect and that, in consequence of its vesting in the State Authority -

(a) any title or interest in the land heretofore subsisting or capable of arising is extinguished, and

(b) the issue document of title to the land is void and is impounded by the State.

Dated this ..... day of ..... 19 .....

Land Administrator .....

District .....

SCHEDULE OF FORFEITED LAND

*Town/Village or Mukim	*Lot/L.O. No.	Area	Description and No. of Title

*Delete as appropriate

Source: *National Land Code.*

Appendix 4.1.

Total Number of Lots (Land Titles) Peninsular Malaysia, as at 30th June, 1982.

State	No. of Lots/Land Titles
Johore	515,094
Perak	587,160
Selangor	248,645
Kelantan	599,702
Kedah/Perlis	361,256
Terengganu	177,473
Pahang	728,354
Negeri Sembilan	230,303
Malacca	134,647
Penang	235,005
FT Kuala Lumpur	390,800
Perlis	60,000
Total	3,708,439

Source: Survey and Mapping Division, Survey Department, Ministry of Land and Regional Development, Malaysia, 1982, presented as Appendix 1.6a in Nik Mohd Zain Haji Nik Yusof's, 'Land Tenure and Law Reforms in Peninsular Malaysia', a Ph.D dissertation submitted to the University of Kent, 1989 (Unpublished).

Appendix 4.2.

Land Titles in Peninsular Malaysia, 1993.

State	Titles	Change
Johore	750,000	
Perak	593,000	
Selangor	529,460	
Kelantan	490,000	
Kedah	482,153	The total number given as of December 1993 was 436,023
Terengganu	295,000	The total number given as of December 1993 was 263,000
Pahang	263,000	
Negeri Sembilan	230,000	
Malacca	176,000	
Penang	160,637	
FT Kuala Lumpur	150,000	The total number given as of December 1993 was 143,000
Perlis	60,000	The total number given as of January 1994 was 54,992
Total	4,180,061	

Source: Mohaizi Mohamad, 'Isu-isu dan Pelaksanaan Maklumat Geografi di Organisasi Berasaskan Tanah,' Survey and Mapping Department, Ministry of Lands and Co-operative Development, presented as the Selangor State Director of Lands and Mines information paper, 1993 (for first two columns); and, the State Director of Lands and Mines Office, Kedah, Terengganu, Federal Territory and Perlis.

Note: The researcher is unable to explain the conspicuous discrepancies which appeared in the total number of titles. Whereas the number genereally increases over the years, the 'change' column above shows that in at least four states, the number of titles decreases. Compare the above with figures of eleven years earlier in Appendix 4.1 which also shows decreasing total number of titles in five states: Kelantan, Negri Sembilan, Pahang, Penang and the Federal Territory of Kuala Lumpur. Whilst Negri Sembilan experienced a decrease of only 303 titles, Pahang experienced the 'loss' of 465,354 titles, the FT Kuala Lumpur 240,800 titles, Kelantan 109,702 titles and Penang 74,368 titles!

Appendix 4.3.

State Revenue from Land Taxation - Quit Rent, Peninsular Malaysia, 1982.

State	Current Year Tax	Amount Should be Collected	Amount Collected in 1982	Amount of Arrears as at 31.12.82	% Collected
	in Malaysian Ringgit (RM)				
Perak	15,586,968.10	22,715,978.18	19,602,846.19	3,113,131.99	86.3
Johore	21,676,353.00	28,615,030.90	22,091,029.18	6,524,001.72	77.2
Malacca	6,192,156.84	7,780,014.98	5,813,673.36	1,966,341.62	74.7
N.Sembilan	9,580,717.75	15,121,916.39	9,974,491.29	5,147,425.10	66.0
Kelantan	5,083,561.90	7,556,190.30	4,564,131.91	2,992,058.39	61.9
Kedah	7,280,751.65	9,481,852.65	5,770,115.85	3,711,736.80	60.9
Selangor	21,218,500.00	33,075,291.21	17,518,231.56	15,557,059.65	53.0
Perlis	938,000.00	1,486,110.50	776,745.35	709,365.15	52.3
Penang	9,722,269.14	15,658,975.49	7,075,840.31	8,583,135.18	45.2
Pahang	8,134,388.56	16,736,103.61	7,498,895.83	9,237,207.78	44.8
Trengganu	2,344,897.91	5,700,955.30	2,489,412.01	3,211,543.29	43.7
FT Kuala Lumpur	19,705,653.42	45,039,005.43	14,189,130.02	30,849,875.41	31.5
Total	127,464,718.27	208,967,424.90	117,364,542.86	91,602,882.08	56.2

Source: Abdul Karim Osman.'Cukai Tanah dan Prestasi Cukai Tanah Oleh Pejabat-pejabat Tanah di Semenanjung pada Tahun 1982.' Administrative and Legal Division, Ministry of Lands and Regional Development. (Unpublished). 1983.

Note: 1. As compared to 1981 rent arrears of RM81.5 millions, there was a total arrrears increase of RM10.1 millions the following year when the amount reached RM91.6 millions.

2. Abdul Karim admitted his own doubt of the reliability of the above figures, for he claimed that states like Selangor and Perak did not update their data.

Appendix 4.4.

Land Rent Arrears, Peninsular Malaysia, 1992.

State	Total of Land Titles in Arrears	Total of Rent Arrears as of November 1992 (RM)
Selangor	133,917	49,364,153.66
Perak	120,870	26,880,515.04
Pahang	101,200	27,775,757.54
Terengganu	68,409	3,963,848.58
N. Sembilan	60,866	15,015,392.67
Penang	38,658	46,590,609.01
FT Kuala Lumpur	35,372	32,197,951.72
Perlis	12,880	4,210,531.25
Johore	n.a	20,394,711.49
Kedah	n.a.	n.a.
Kelantan	n.a.	n.a.
Malacca	n.a.	n.a.
Total	572,172	196,520,514.77

Source: 'The State Directors of Lands and Mines Conference, 2-3 March 1993, Paper No. 1/93.' (Unpublished).

Appendix 4.5.

Progress of Campaign to Increase Land Revenues for the State of Pahang, 1986-1992.

Year	Land Revenue Collection (RM/millions)		
	Target	Actual	Change
1986	No target	40.3	-
1987	" "	38.3	- 2.0
1988	" "	46.3	+ 8.0
1989	" "	49.0	+ 2.7
1990	60.0	60.4	+ 11.4
1991	80.0	78.1	+ 17.7
1992	100.0	102.0	+ 23.9
1993	124.0	-	-

Source: Adapted from 'The State of Pahang Land Administration Innovation Report, 30 November 1992,' *op. cit.*, 'Paper No. 1/93.'

Researcher's Note: It has to be observed that the above amount represents the total of all revenues derivable from land. However, the figures do not necessarily indicate corresponding increase in revenue from land rent despite the State's overall improved revenue collection.

Appendix 4.6.

Land Rent Arrears for the Year 1981 (Federal Lands).

States	Total Number of Lots	Amount of Rent in Arrears
Kelantan	474	35,058.50
Kedah	718	65,611.20
Melaka	276	24,853.10
Johor	545	48,280.60
Negeri Sembilan	183	24,336.30
Pahang	510	56,631.30
Selangor	417	295,083.55
Perak	462	74,844.30
Trengganu	390	11,009.60
Pulau Pinang	261	167,271.14
Perlis	108	7,584.60
Federal Territory Kuala Lumpur	142	204,939.60
Total	4,486	1,015,503.79

Source: State Directors of Lands and Mines Meeting, Paper No. Bil. 30/81: 'Cadangan Bayaran Caruman Tahunan (Annual Grant in Lieu) Sebagai Menggantikan Bayaran Cukai Tahunan Bagi-bagi Tanah Yang Didaftarkan di Atas Nama Pesuruhjaya Tanah Persekutuan, Malaysia.'

Appendix 5.1.

Proportions of Land Rent to Overall Total of Land Revenue, Straits Settlements, 1882-1887.

Amount and Percentage of Land Rent as against the Total Land Revenue ($)									
	Penang			Singapore			Malacca		
	Land Revenue	Land Rent	%	Land Revenue	Land Rent	%	Land Revenue	Land Rent	%
1882	n.a.	28,496	-	n.a.	n.a.	-	65,086	52,788	81
1883	42,527	26,190	62	60,629	27,891	45	68,203	55,441	81
1884	45,213	24,215	54	265,957	30,530	11	68,188	55,767	82
1885	36,127	22,243	62	196,828	34,152	17	64,703	52,543	81
1886	51,749	26,669	52	278,239	37,280	13	64,760	52,827	82
1887	76,654	38,263	50	251,863	37,613	15	76,471	62,374	82
Total	252,270	166,076	-	1,053,516	167,466	-	407,411	331,740	-

Source: Compiled by the researcher from *ANM/P/SP2* , 'Annual Report of the Land Department, Straits Settlements, for the Year 1884' dated 20th February 1885, 'AR 1885' dated 19th February 1886, 'AR 1886' dated 14th March, 1887, and 'AR 1887' dated 1st June, 1888; all by W.E. Maxwell, Commissioner of Lands Titles, Straits Settlements.

Appendix 5.2.

FMS : Sources of Revenue, 1896-1936.

Year	Land		Licences		Customs		Railways		Total
	$ mil.	%	$ mil.	%	$ mil.	%	$ mil.	%	$ mil.
1896	0.5	6.0	1.4	16.7	4.3	51.2	1.3	15.5	8.4
1900	0.7	4.5	2.0	12.8	9.1	82.1	2.2	14.1	15.6
1904	0.8	3.6	3.9	17.5	11.0	49.3	3.6	16.1	22.3
1908	1.2	4.9	4.4	17.9	9.6	61.5	n.a.	-	24.6
1912	2.1	4.9	12.0	28.2	14.1	33.1	8.4	19.7	42.6
1916	2.5	4.9	13.3	26.0	15.2	29.7	11.6	22.7	51.1
1920	3.2	4.4	18.1	25.0	20.7	28.6	n.a.	-	72.3
1924	3.8	5.4	14.2	20.1	22.6	32.0	n.a.	-	70.7
1928	4.3	4.5	18.3	19.1	28.8	30.1	n.a.	-	95.6
1932	4.6	7.0	15.6	23.8	21.8	33.2	n.a.	-	65.6
1936	5.4	7.9	3.6	5.2	31.4	45.8	n.a.	-	68.6
Total	29.1	5.4	106.8	35.0	188.6	20.0	-	-	537.4

Source: Robert O. Tilman, Bureaucratic Transition in Malaya, Cambridge University Press, London, 1964, p.54, with a further note that the table was compiled from the *Annual Reports* and the *Statistical Abstracts* of the FMS. [Note: Percentages inserted by the researcher].

Appendix 5.3a.

Abstract of Receipts of the Straits Settlements for 1862-63.

RECEIPTS (in Rs.)					
------	Singapore	Penang	Malacca	Total	Grand Total
ON ACCOUNT OF LOCAL GOVERNMENT					
Land Revenue	61,025	36,807	30,663	128,495	
Excise	838,486	272,371	119,901	1,230,758	
ASSESSED TAXES					
Income	841	461	334	1,636	
Stamps	63,925	13,067	2,659	7,9651	
Law and Justice	50,724	42,719	13,462	106,905	
Marine	24,909	10,823	126	35,858	
Public Works	38,092	36	46	38,174	
Total Local Government Receipts	1,096,667	388,011	169,825	1,654,503	1,654,503
ON ACCOUNT OF GENERAL GOVERNMENT OF INDIA					
Postal	116,427	15,107	704	132,238	
Convicts	16,948	362	3,402	20,712	
Public Debts - "Suitors's Fund, &c."	181,550	56,244	39,184	276,978	
ON ACCOUNT OF IMPERIAL GOVERNMENT					
Naval Coal Depot	11,769	-----	-----	11,769	
Total Indian and Imperial Receipts	326,694	71,713	43,290	441,697	441,697
MUNICIPAL RECEIPTS	251,462	125,675	31,035	408,172	408,172
Total Local, Indian, Imperial and Municipal Receipts	1,674,823	585,399	244,150	2,504,372	
				RS 2,504,372	

Source: *CO/273/8*: Enclosure No. 1 in 2129/64. Selected and re-arranged by researcher.

Appendix 5.3b.

Abstracts of Disbursements of the Straits Settlements, 1862-63.

DISBURSEMENTS					
-----	Singapore (RM)	Penang (RM)	Malacca (RM)	Total (RM)	Grand Total (RM)
ON ACCOUNT OF LOCAL GOVERNMENT					
Revenue Departments[1]	19,476	17,060	19,237	55,773	
Political Pensions and Compensations	18,614	22,834	19,265	60,713	
Public Works	238,517	63,131	43,045	344,693	
SALARIES AND ESTABLISHMENTS					
General	54,737	61,050	43,130	158,917	
Ecclesiastical	9,947	11,155	5,041	26,143	
Medical	15,240	5,640	5,640	26,520	
Miscellaneous	6,287	1,557	1,479	9,323	
Law and Justice	94,214	79,582	40,166	213,962	
Police	17,479	4,751	17,766	39,996	
Education, Science and Art	9,967	5,126	3,418	18,511	
Superannuations, Allowances and Gratuities	32,035	13,797	5,539	51,371	
Marine	23,824	12,939	14,384	51,147	
Suppression of Piracy	32,244	11,841	20,300	64,385	
General	17,031	5,252	52,736	75,019	
Total Local Govt. Departments	589,612	315,715	291,146	1,196,473	1,196,473
ON ACCOUNT OF GENERAL GOVERNMENT OF INDIA					
Postal	16,694	2,723	523	19,940	
Convicts	114,599	58,255	33,427	206,281	

Public Debt - Suitor's Fund, &c.	231,465	59,268	64,900	355,633	
- Interest on do.	20,251	12,308	8,358	40,917	
Military	312,632	165,063	53,268	530,963	
ON ACCOUNT OF IMPERIAL GOVERNMENT					
Naval Coal Depot	11,769	-----	-----	11,769	
Total Indian and Imperial Disbursements	707,410	297,617	160,476	1,165,503	1,165,503
MUNICIPAL DISBURSEMENTS	283,406	124,979	31,082	439,467	439,467
Total Local, Indian, Imperial and Municipal Disbursements	1,580,428	738,311	482,704	2,801,443	
				RS	2,801,443

Source: *CO/273/8*: Enclosure No. 1 in 2129/64. Selected and re-arranged by researcher.

Appendix 5.3c.

Estimated Receipts of the Revenue Department, Straits Settlements for the Year 1865-66.

	Actuals of 1863-64 (Rs.)	Budget Estimate of 1864-65 (RS)	BUDGET ESTIMATE OF 1865-66 (Rs.)			
			Singapore	Penang	Malacca	Total
LAND REVENUE						
Quit and Ground Rents	43,541	52,147	40,500	14,000	3,715	58,215
Transfer Fees	9,930	11,300	3,000	6,000	1,500	10,500
Fees on Cutting Papers	295	150	---	100	---	100
Tenths on Commuted Lands	6,312	7,000	---	---	6,000	6,000
Tenths on Uncommuted Lands	3,781	5,122	---	---	5,600	5,600
Survey Fees	911	850	800	200	100	1,100
Total	64,770	76,569	44,300	20,300	16,915	81,515
FOREST REVENUE						
Tenths on Timber	1,638	970	---	1,600	792	2,392
Permit Fees	650	800	660	---	---	660
Total	2,288	1,770	660	1,600	792	3,052
MISCELLANEOUS						
Pawnbroker's Fees	53,369	58,314	53,856	3,000	440	57,296
Tin Farm	5,754	5,000	---	---	5,280	5,280
Brick Kilns	970	538	---	---	660	660
Tenths on Coral Granite	160	161	---	---	158	158
Total	60,253	64,013	53,856	3,000	6,538	63,394
ABKARRI						
Opium Farm	800,867	808,995	660,000	173,300	81,048	914,348
Spirit Farm	400,127	408,811	171,600	114,500	39,072	325,172
Toddy and Bhang Farm	23,967	24,034	15,576	10,200	2,059	27,835

Total	13,14,961	13,31,840	8,47,176	2,98,000	1,22,179	12,67,355
TOTAL REVENUE DEPARTMENT	14,42,272	14,74,192	9,45,992	3,22,900	1,46,424	14,15,316

Source: *CO273/8*. Selected and re-arranged by the researcher.

Appendix 5.3d.

Estimated Dirbursements of Revenue Department, Straits Settlements,1865-66.

	Actuals of 1863-64 (Rs.)	Budget Estimate of 1864-65 (Rs.)	BUDGET ESTIMATE OF 1865-66 (Rs.)			
			Singapore	Penang	Malacca	Total
LAND REVENUE						
Surveyor's Office						
Surveyor General	8,203	8,640	8,640	---	---	8,640
Surveyor	5,000	6,000	---	---	6,000	6,000
Assistants and Land Measurers	8,021	7,728	3,420	2,148	2,700	8,268
Peons	276	276	132	---	144	276
Office Contigencies	651	550	200	200	300	700
Travelling Allowance	794	2,066	600	360	---	360
Land Office						
Clerks, Collectors and Bailiffs	14,554	14,532	2,880	6,972	4,824	14,676
Peons	1,028	1,028	264	344	420	1,028
Office Contigencies	80	550	300	200	100	600
Travelling Allowance	90	90	---	90	---	90
Allowances to Punghooloos	638	450	---	---	600	600
Extra Bailiffs	360	360	---	360	---	360
Forest Revenue						
Establishment	---	1,000	---	---	---	---
Contigencies	---	500	1,000	---	---	1,000
Total	39,695	43,770	17,436	10,674	15,388	43,498

Source: *CO 273/8*. Selected and re-arranged by the researcher.

Appendix 5.3e.

Abstract of the Probable Annual Revenue of the Straits Settlements if Transferred to the Colonial Department.

ESTIMATED REVENUE					
-----	Singapore (Rs.)	Penang (Rs.)	Malacca (Rs.)	Total (Rs.)	Grand Total (Rs.)
Land Revenue	80,000	31,000	50,000	161,000	
Excise	910,000	295,000	123,000	1,328,000	
Stamps	200,000	55,000	8,000	263,000	
Law and Justice	65,000	40,000	10,000	115,000	
Marine	32,500	5,000	10,000	47,500	
Public Works	40,000	-----	-----	40,000	
Postal	32,000	5,000	1,000	38,000	
Miscellaneous	14,000	-----	-----	14,000	
Total Estimated Ordinary Revenue	1,373,500	431,000	202,000	2,006,500	2,006,500
MUNICIPAL REVENUE	250,000	125,000	31,000	406,000	406,000
Total Estimated Ordinary and Municipal Revenues	1,623,500	556,000	233,000	2,412,500	
				Rs.	2,412,500

Source: *CO 273/8* Enclosure No. 2 in 2129/64. Selected and re-arranged by the researcher.

Appendix 5.3f.

Abstract of the Probable Annual Expenditure of the Straits Settlements if Transferred to the Colonial Department.

ESTIMATED EXPENDITURE					
-----	Singapore (Rs.)	Penang (Rs.)	Malacca (Rs.)	Total (Rs.)	Grand Total (Rs.)
Revenue Departments:-					
Land Revenue	17,000	10,500	15,000	12,500	
Registration of Trade & Shipping	5,500	2,100	1,000	8,600	
Treasury and Stamp Office	24,000	30,600	21,400	76,000	
Political Pensions & Compensations	19,672	22,834	15,034	57,540	
Public Works	180,000	70,000	50,000	300,000	
SALARIES AND ESTABLISHMENTS					
General Government	98,070	49,035	49,035	196,140	
Ecclesiatical	11,000	11,500	5,100	27,600	
Medical	5,640	5,640	5,640	16,920	
Miscellaneous	900	400	---	1,300	
Law and Justice	146,800	85,500	26,000	258,300	
Police	34,000	23,600	24,000	81,600	
Postal	23,700	4,200	700	28,600	
Education, Science and Art	12,000	9,000	8,000	29,000	
Pensions	20,000	10,000	5,000	35,000	
Charitable Institutions	28,500	8,500	1,500	38,500	
Marine	38,500	13,000	17,000	68,500	
Suppression of Piracy	48,000	15,600	18,400	82,000	
Military	380,000	200,000	50,000	630,000	
General	3,500	2,500	2,000	8,000	
Total Estimated Ordinary Expenditure	1,096,782	574,509	314,809	1,986,100	1,986,100

MUNICIPAL EXPENDITURE	250,000	125,000	31,000	406,000	406,000
Total Estimated Ordinary and Municipal Expenditure	1,346,782	699,509	345,809	2,392,100	
				Rs.	2,392,100

Source: *CO 273/8* Enclosure No. 2 in 2129/64. Selected and re-arranged by the researcher.

Appendix 5.4.

Abstracts of the States' Revenue and Expenditure for 1987-1994 in Comparison to the Land Rents and the Capitation Grants.

State	Total (in RM millions)		Land Rent (RM mil.)			Capitation Grant (RM mil.)		
	Revenue	Expenditure	Amount	% (R)	% (E)	Amount	% (R)	% (E)
Johore	3,365	4,196	375	11.14	8.94	106	3.15	2.53
Kelantan	896	1,530	67	7.48	4.38	80	8.93	5.23
Terengganu	3,480	4,746	48	1.38	1.01	47	1.35	0.99
Malacca	605	1,106	129	21.32	11.66	46	7.60	4.16
Penang*	855	1,297	223	26.08	17.19	67	7.84	5.17
Selangor	4,154	6,599	517	12.45	7.83	109	2.62	1.65
N. Sembilan	898	1,256	202	22.49	16.08	44	4.50	3.50
Perlis*	349	565	25	7.16	4.24	25	7.16	4.24
Perak	2,344	2,699	401	17.11	14.86	83	3.54	3.08
Kedah	780	1,655	104	13.33	6.28	59	7.56	3.56
Pahang	2,433	n.a.	263	10.81	n.a.	n.a.	n.a.	n.a.
Total	20,159	25,649	2,354	11.68	9.18	666	3.30	2.60

Source: Tax Divison, the Ministry of Finance, Malaysia, August 1994.

Note: *In the case of Penang the figures does not include revenues for 1991, 1993 and 1994 and as for Perlis it excluded the 1991 expenditure.

Appendix 5.5.

Samples of Defaulters (Bodies Corporate) in Districts A and B, Johore, District B, Kelantan and the Kuala Lumpur Land Office, August 1994.

No. of Titles	District	Registered Proprietor	Arrears		Total Due (RM) incuding Penalty
			Lenght	Amount (RM)	
392 titles	A, Johore	S.J.A.E.	1982-1994		86,411.00
48 titles	B, Johore	S.A.S.B.	1986-1994		13,475.00
2,340 titles	A, Johore	S.P.L.B.	1993-1994		93,780.00
1 title	K. Lumpur	U.D.A.	1991-1994		24,980.00
1 title	K. Lumpur	L.T.I.	1990-1994	61,568.00	99,147.50
1 title	K. Lumpur	L.M.S.C.P.L.	1983-1994	232,747.00	360,798.20
1 title	K. Lumpur	U.H.L.	1984-1994		129,512.90
1 title	K. Lumpur	P.U.S.B.	1984-1994		158,957.20
1 title	K. Lumpur	L.A.B.S.L.N.	1975-1994		278,141.20
1 title	K. Lumpur	P.J.I.K.K.L.	1975-1994		175,444.10
6 titles	B, Kelantan	P.P.D.C.	1986-1994		13,875.00
36 titles	B, Kelantan	K.B.N.		7,182.10	7,546.60
Total					1,452,338.70

Source: Revenue Unit Files, Land Offices Districts A and B, Johore, District B, Kelantan, and Kuala Lumpur.

Note: Defaulters include five housing developers, a company, a co-operative, two public statutory bodies, two local authorities and a charity trust.

Appendix 5.6.

Part 111 of the Tenth Schedule of the Federal Constitution.

Sources of Revenue Assigned to States.

1. Revenue from toddy shops.

2. Revenue from lands, mines and forests.

3. Revenue from licences other than those connected with mechanically propelled vehicles, electrical installations and registration of businesses.

4. Entertainment duties.

5. Fees in court other than Supreme Court.

6. Fees and receipts in respect of specific services rendered by department of State Governments.

7. Revenue of town boards, town councils, rural boards, local councils and similar local authorities, other than -

   (a) municipalities established under any Municipal Ordinance;
   (b) those town boards, town councils, rural boards, local councils and similar local authorities which have power under written law to retain their revenues and control the spending thereof.

8. Receipts in respect of water supplies, including water rates.

9. Rents on State property.

10. Interest on State balances.

11. Receipts from land sales and sales of State property.

12. Fines and forfeitures in court other than Supreme Court.

13. Zakat, Fitrah and Bait-ul-Mal and similar Islamic religious revenue.

14. Treasure trove.

Appendix 5.7. : Royalties for States in Peninsular Malaysia, 1987-1994.

State	1987	1988	1989	1990	1991	1992	1993	1994	Total
Johore: P			0.02	0.02					0.04
T	13.31		21.8	9.39					44.48
M	17.09								17.09
Perlis: M	0.81								0.81
Perak: M	18.42								18.42
Kedah: P		0.02		5.77					5.79
T				3.57	7.01				10.58
M	4.37	0.88	1.1	1.06	5.57				12.98
Kelantan: T	15.26		9.97	30.7	9.4	32.1	25.4	25.4	148.1
M						2.0	0.42	0.42	2.84
Terengganu: P	202.1	267	266	349	418	419	489	416	2826.1
T	8.17	10.9	14.5	16.2	12.8	12.6	15.1	15.1	105.3
M	13.8	3.07	3.07	3.07	3.07	3.07	3.07	3.07	35.38
Malacca: T	0.28	0.11	0.18	0.14	0.13	0.2	0.1	0.1	1.24
Pahang: T	42.4	49.1	45.7	35.7	45.2	54.5	29	36.5	337.9
Selangor: M					0.01				0.01

Source: Tax Division, Ministry of Finance, Malaysia: August, 1994.

Keys: P = Petroleum; T = Timber; M = Miscellaneous.

Notes:
1. Figures compiled and re-arranged by the researcher. Only three items (P,T and M) of royalties were listed in the data.
2. Figures are presented as they appeared in the original data. The researcher is unable to explain whether the conspicuous absence of many figures are due to their non-availability or their non-entry in the original data.
3. Figures above indicate the total absence of any figures for Penang and Negeri Sembilan.

Appendix 5.8.

National Land Code

Form 5A

(Sections 81 and 82)

NOTICE THAT LAND REVENUE IS DUE

Land Application No.....

To.....

of.....

You are hereby required, within a period of..... from the date pf the service of this notice to *pay / place on deposit at the Land Office of this district the following sums:-

Rent for the first year	$
Premium	$
*Survey Fees (excluding Boundary Marks)	$
Boundary Marks	$
Preparation and registration od documents of qualified title and final documents of title	$_____
Total ...	$_____

Take notice that if the above total is not *paid / deposited in full within the time specified then, by virtue of the provisions of section *81 / 82 of the National Land Code -

* the approval of your apllication will lapse,

* your application will be deemed to have been withdrawn.

Dated this.....day of.....19.....

Land Administrator.....

(L.S.) District.....

Appendix 5.9.

National Land Code

Form 5B

(Section 86)

State of.....

GRANT

Reg. No.....

CATEGORY OF LAND USE.....

Here insert "Agriculture", "Building", "Industry" or "Nil" as appropriate.

The land scheduled below, which, for the purposes of identification is shown in the included plan, is held in perpetuity by the proprietor for the time being named in the record op proprietorship overleaf, subject to the provisions of the National Land Code, to the category specified above and to the express conditions and restrictions in interest below, in consideration of the due payment of the annual rent of $.....

By command of the State Authority

registered this..... day of.....19.....

(L.S.) .....

Registrar of Titles

Correspondence
No.....

SCHEDULE OF LAND

District.....
Town / Village / Mukim.....

Delete as appropriate.

Lot No.....Area of lot.....
Standard Sheet No.....
Certified Plan No.....
File No.....
*Within Malay Reservation / Aboriginal Area / Aboriginal Reserve / Group Settlement Area, etc.....Gazette Notification No.....
dated.....

EXPRESS CONDITIONS
RESTRICTIONS IN INTEREST

To be completed when the title is issued in continuation

Date of first alienation.....

No. of original title (final or qualified).....

No. of immediately preceding title (if different from above).....

Heading to be printed on all subsequent leaves of this Form

RECORD OF PROPRIETORSHIP, OF DEALINGS AND OF OTHER MATTERS AFFECTING TITLE

---

*Delete as appropriate

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6. Interviewees.

A. Recorded on Tapes:

01. Mr. Abdul Halim bin Abdul Rahman, Hj., Deputy Chief Minister, Kelantan.

02. Mr. Dr. Nik Mohd Zain bin Haji Nik Yusof, Director-General of Lands and Mines Malaysia, Kuala Lumpur.

03. Mr. Khalid bin Kadir, Haji, State Director of Lands and Mines, Kelantan.

04. Mr. Ramli bin Chik, State Treasurer, Kelantan.

05. Mr. Mohd Radzi, Haji, State Director of Lands and Mines, Perlis.

06. Mr. Baderi bin Haji Dasuki, Haji, State Deputy Director of Lands and Mines, Johore.

07. Mr. Mohd Yusof bin Nayan, Haji, State Deputy Director of Lands and Mines, Kedah.

08. Mr. Munawir bin Tambrin, Haji, Deputy Director of Lands and Mines, the Federal Territory, Kuala Lumpur.

09. Land Administrator, District A Land Office, Johore.

10. [Senior] State Assistant Director of Lands and Mines, Pahang.

11. State Assistant Director of Lands and Mines, Perlis.

12. [Senior] Assistant Land Administrator, District A Land Office, Kelantan.

13. [Senior] Assistant Land Administrator , District B Land Office, Johore.

14. Assistant Land Administrator, Kuala Lumpur Land Office.

15. Assistant Land Administrator , District B Land Office, Kelantan.

16. Systems Analyst, Trengganu.

17. Computer Programmer , Kelantan.

18. Secretary District Council, District B, Kelantan.

19. Executive Account Officer, Kuala Lumopur Land Office.

20. Land Inspector, Kedah.

21. Senior Administrative Assistant, District A Land Office, Johore.

22. Senior Administrative Assistant, District B, Johore.

23. Senior Administrative Assistant, District A Land Office, Kelantan.

24. Senior Administrative Assistant, District B Land Office, Kelantan.

25. Senior Administrative Assistant, Office of the State Director of Lands and Mines, Perak.

26. Administrative Assistant, Office of the State Director of Lands and Mines, Kelantan.

27. Administrative Assistant, District B Land Office; Johore.

28. Administrative Assistant, Office of the State Director of Lands and Mines, Kedah.

29. Administrative Assistant (Contract), District A Land Office, Johore.

30. Administrative Assistant (Contract), District B Land Office, Johore.

31. Notice Server , District B Land Office, Johore.

32. Dato' Andika Indera Ishak bin Muhammad 'Isa, retired State Sceretary, Trengganu.

33. Datuk Hassan bin Ibrahim, Haji, retired Director-General, Inland Revenue Department, Malaysia - presently Consultant Adivser to Chairman, Malaysia Telecommunications Co. Ltd.

34. Manager, Bank Bumiputra, Johore Bahru Main Branch, Johore.

35. Credit Officer, Non-Performing Loan (NPL) Section, Bank Bumiputra, Headquarters, Kuala Lumpur.

36. Lee, L.B., Company Secretary, L. A. E, Alor Setar, Kedah.

37. Ooi, J.C., Company Secretary, J. D. and S. J., Kangar, Perlis.

B. Recorded Notes:

01. Head, Audit Branch, the Federal Territory, Kuala Lumpur.

02. Deputy Head, Audit Branch, Johore.

03. State Assistant Director of Lands and Mines, Penang.

04. State Assistant Director of Lands and Mines, Johore.

05. Assistant Land Administrator, District B Land Office, Johore.

06. Yeo, E., Marketing Executive, P. J., Johore Bahru.

07. Tooi, L.

08. Lee, S.H.

09. Hashim, H.

10. Gee, T.T.

11. Ah Mooi.

12. Chong, Y.S.
13. Johari, A.
14. Pang, A. K.
15. Yee Nyok.
16. Mohd Noor, A.
17. Fuar, C.S.
18. Khor, A. T.
19. Pak Su Tuan Mat.
20. *Cikgu* Nik Lah.
21. Raja, S.
22. Muthu, K.
23. Mek Nab.
24. Chan, H. H.